No. 3682

# United States

# Circuit Court of Appeals

## For the Ninth Circuit.

# Transcript of Record.

**(IN THREE VOLUMES.)**

THE UNITED STATES OF AMERICA,

Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, L. B. McMURTRY, J. M. McLEOD, and STANDARD OIL COMPANY,

Appellees.

**VOLUME I.**

**(Pages 1 to 384, Inclusive.)**

**Upon Appeal from the United States District Court for the Southern District of California, Northern Division.**

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Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. B–10.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, L. B. McMURTRY, J. M. McLEOD and STANDARD OIL COMPANY,

Defendants.

**Citation on Appeal.**

The United States of America—ss.

To California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, L. B. McMurtry, J. M. McLeod, and Standard Oil Company, GREETING:

YOU ARE HEREBY CITED and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty (30) days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern Division of the Southern District of California, wherein the United States of America is appellant and California Midway Oil Company, Associated Oil Company, Columbus Midway Oil

Company, 32 Oil Company, L. B. McMurtry, J. M. McLeod, and Standard Oil Company are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf. [I*]

WITNESS the Honorable R. S. BEAN, United States District Judge for the Southern District of California, this 15th day of December, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America one hundred and forty-third.

R. S. BEAN,
District Judge. [II]

Service of the above citation is hereby accepted this 22d day of December, A. D. 1919, for and on behalf of the appellees, California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, L. B. McMurtry, J. M. McLeod, and Standard Oil Company.

HENRY ACH,
EDMUND TAUSZKY,
Solicitors for Associated Oil Company.
ROBERT M. PEASE,
Solicitor for J. M. McLeod and 32 Oil Company.
JORDAN & BRANN,
Solicitor for L. B. McMurtry.
GEORGE E. WHITAKER,
Solicitor for California Midway Oil Company.

*Page-number appearing at foot of page of original certified Transcript of Record.

PILLSBURY, MADISON & SUTRO,
Solicitors for Standard Oil Company.
U. T. CLOTFELTER,
W. B.
Solicitor for Columbus Midway Oil Company. [III]

[Endorsed]: No. B–10. In the District Court of the United States for the Southern District of California, Northern Division. United States of America, Plaintiff, vs. California Midway Oil Co., et al., Defendants. Citation on Appeal. Filed Jan 8, 1920. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [IV]

---

**Names and Addresses of Attorneys of Record.**

For Appellant:

HENRY F. MAY, Esq.,
E. B. LACY, Esq.,
Special Assistants to the Attorney General,
214 Post Office Building, San Francisco, Cal.

For Appellees:

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EDMUND TAUSZKY, Esq., Sharon Bldg., San Francisco, Cal.,
For Associated Oil Company.
ROBERT M. PEASE, Esq., 519 Story Bldg., Los Angeles, Cal.,
For J. M. McLeod and 32 Oil Company.

JORDAN & BRANN, Monadnock Bldg., San Francisco, Cal.,
For L. B. McMurtry.

GEO. E. WHITAKER, Esq., Bakersfield, Cal.,
For California Midway Oil Company.

PILLSBURY, MADISON & SUTRO, Standard Oil Bldg., San Francisco, Cal.,
For Standard Oil Company.

U. T. CLOTFELTER, Esq., 436 Kirckhoff Bldg.,Los Angeles, Cal.,
For Columbus Midway Oil Company.

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In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. B–10.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, L. B. McMURTRY, J. M. McLEOD, and STANDARD OIL COMPANY,
Defendants.

**Amended Bill of Complaint.**

To the Judges of the District Court of the United States for the Southern District of California, Sitting Within and for the Northern Division of said District:

Comes now The United States of America, by

Thomas W. Gregory its Attorney General, leave of Court being first had and obtained, and presents this, its amended bill in equity, against California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, L. B. McMurtry, J. M. McLeod, and Standard Oil Company (citizens and residents, respectively, as stated [1] in the next succeeding paragraph of this bill), and for cause of complaint alleges:

I.

Each of the defendants, California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, and Standard Oil Company, now is, and at all the times hereinafter mentioned as to it was, a corporation organized and existing under the laws of the State of California.

The defendant, J. M. McLeod, now is, and at all the times hereinafter mentioned as to him was, a resident and citizen of the Southern District and State of California.

The defendant, L. B. McMurtry, now is, and at all the times hereinafter mentioned as to him was, a resident and citizen of the Northern District and State of California.

II.

For a long time prior to and on the 27th day of September, 1909, and at all times since said date, the plaintiff has been and now is the owner and entitled to the possession of the following described petroleum, or mineral oil, and gas land, to wit:

The Northwest quarter (NW.¼) of Section thirty-two (32), Township thirty-one (31)

South, of Range twenty-three (23) East, Mount Diablo Base and Meridian, and of the oil, petroleum, gas and all other minerals contained in said land.

III.

On the 27th day of September, 1909, the President of the United States, acting by and through the Secretary of the Interior, and under the authority legally invested in him so to do, duly and regularly withdrew and reserved all of the land hereinbefore particularly described (together with other lands) from mineral exploration, and from all forms of location, settlement, selection, filing, entry, patent, occupation or disposal, under [2] the mineral and nonmineral land laws of the United States, and since said last-named date none of said lands have been subject to exploration for mineral oil, petroleum or gas, occupation, or the initiation of any right under the public land laws of the United States.

IV.

Notwithstanding the premises, and in violation of the proprietary and other rights of the plaintiff, and in violation of the laws of the United States, and in disregard of, contrary to, and by infringement upon the governmental policy adopted by the United States for the protection, conservation, disposal and use of the petroleum oil and gas contained in said land, and in other lands belonging to the United States, the said defendants, California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, L. B. McMurtry, J. M. McLeod and Standard Oil Company, entered

upon and took possession of the land hereinbefore particularly described, for the purpose of prospecting, exploring, drilling oil wells for, discovering, extracting, producing, converting and appropriating to their own use petroleum oil and gas therefrom, and did so prospect, and did continue so to prospect, extract, produce, explore, drill wells for, and discover, extract, produce, convert, and appropriate to their own use such oil and gas, long subsequent to the date on which said land was withdrawn, as hereinbefore mentioned, by said order of withdrawal of the 27th of September, 1909.

V.

None of said defendants, nor any other person or corporation under whom or through whom they claim a right or interest in said land, nor any other person, had discovered petroleum oil, gas or other minerals on or in said land before said land was withdrawn, as hereinbefore stated, by said order of [3] withdrawal of the 27th of September, 1909, as hereinbefore set forth.

VI.

None of the defendants, nor any other person, was, at the time said land was withdrawn on the 27th of September, 1909, as hereinbefore set forth, a *bona fide* occupant or claimant of said land and in the diligent prosecution of work leading to the discovery of oil or gas thereon or therein, under a valid and subsisting location under the mining laws of the United States.

VII.

Long after said land had been withdrawn from

prospecting, exploration, and entry, as hereinbefore mentioned, the defendants, California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, L. B. McMurtry, and J. M. McLeod, drilled oil and gas wells on said land for the extraction, production and appropriation of petroleum oil and gas therefrom, and in violation of the proprietary rights of the plaintiff therein, and in violation of the laws of the United States, and of the proclamations and orders issued by the President of the United States, and particularly in violation of said order of withdrawal of September 27th, 1909, and in disregard of, contrary to, and by infringement upon the general governmental policy adopted and declared by the United States for the protection, conservation, use and disposal of petroleum oil and gas in the land hereinbefore particularly described, and in other lands belonging to the United States, to the great and irremediable damage of the plaintiff, and to the great and irreparable injury of said land hereinbefore described, and to the great and irreparable injury of other lands belonging to the United States adjacent to such described land, have extracted, produced, converted and appropriated to [4] their own use, from the land hereinbefore described, and other lands adjacent thereto belonging to the United States, large quantities of petroleum oil and gas, the exact quantities of which petroleum oil and gas so extracted, produced, converted and appropriated, and the value thereof, this plaintiff is unable to state; and said defendants, California Midway Oil

Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, L. B. McMurtry, and J. M. McLeod, are now continuing so to do, and are threatening to, and will hereafter continue so to do, to the further great and irreparable injury of said land, and to the further great and irremediable damage of this plaintiff, if they are not prevented and restrained from so doing by the proper orders of this Honorable Court.

VIII.

The said defendants, California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, L. B. McMurtry, and J. M. McLeod, have drilled, maintained, and operated oil and gas wells on said above-described land, and have extracted and produced petroleum oil and gas from such wells in an unskilled, negligent, careless and unworkmanlike manner so as to cause the inflow of large, unnecessary and unreasonable quantities of water into such wells, and into the oil sands and oil reservoirs in which the petroleum oil and gas are contained in such land, in such manner, and to such an extent, and in such quantities as to cause such water to infiltrate, saturate and impregnate such oil sands and reservoirs, and the petroleum oil and gas therein, to the great and irremediable damage of this plaintiff, and to the great and irreparable injury of said land, and the petroleum oil and gas deposits therein; but as to the exact extent and amount of such damage this plaintiff has no knowledge, and cannot here state; and said defendants

are now continuing so to do, and are [5] threatening to, and will hereafter continue so to do, to the further great and irremediable damage of this plaintiff, and to the further great and irreparable injury of said land, and to the complete extermination and destruction of the petroleum oil and gas deposits therein, if they are not prevented and restrained from so doing by the proper orders of this Honorable Court.

IX.

Of the petroleum oil and gas heretofore extracted, appropriated, converted and produced in the manner and for the purposes stated in paragraph VII of this bill, large quantities have been used, consumed and wasted by the said defendants, California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, L. B. McMurtry, and J. M. McLeod and other large quantities have been sold and delivered by the defendants, California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, L. B. McMurtry, and J. M. McLeod, to the defendant, Standard Oil Company, and other large quantities have been sold and delivered to other persons and corporations whose names are to this plaintiff unknown, and cannot for that reason be here stated, but as to the exact quantities of petroleum oil and gas so converted, appropriated, used, consumed, sold and delivered, and as to the value thereof, and as to the prices received for such quantities thereof as have been sold and delivered, this plaintiff is unable to

state, and because it has no knowledge thereof and has no means of ascertaining the facts in relation thereto except from defendants herein, therefore a full and complete discovery from said defendants in relation thereto is sought herein.

X. [6]

Each and all of the defendants herein claims some right, title or interest in said land, or in some part thereof, or in the petroleum oil or gas therein, or extracted therefrom, or by or through the purchase thereof, and each of which claims is predicated upon or claimed directly or mediately through or under a pretended mining location under the style of "Montana Placer Mining Claim," which said location purported and falsely pretended to have been on and for the land herein specifically described, on the 1st day of January, 1909, by and in the names of, and for the exclusive use and sole benefit of H. E. Bashore, R. B. Welch, W. A. Keenan, William Mahr, Herbert M. Walker, Eugene Metz, F. H. Romaine, Jr., and C. Rupert Walker (whose Christian names except as here stated are unknown to, and cannot be here further stated by this plaintiff) as a pretended association of eight persons acting as locators and under and through a pretended notice of such pretended location, which at the request and through the unauthorized and fraudulent procurement of one L. B. McMurtry (whose Christian name is unknown to and cannot be here stated by this plaintiff), spread upon the mining records of the county in which said land is located, on the 5th day of January, 1909.

That none of said defendants has acquired, or could acquire, and cannot now rightfully and lawfully assert any right, title or interest in and to the said land, or in and to the petroleum oil or gas therein, or in or to any of the petroleum oil or gas heretofore extracted and produced therefrom under and by reason of said pretended location or said pretended notice thereof, for the reason that said pretended location and pretended notice thereof were unlawful, fraudulent, invalid, and have no effect either in law or in equity, because said pretended location was not made and said pretended notice was not caused to be recorded by said pretended locators or by [7] any of them acting in their own proper persons, or through or by any person duly authorized so to do by them, and the said pretended location was not made and the said pretended notice was not recorded in the interest of or for the benefit and use of said pretended locators, or any of them, either individually or as an association, but said pretended location was in truth and in fact made, and the said pretended notice was in truth and in fact caused to be spread upon the said mining records by said L. B. McMurtry, under and through mesne conveyances from whom the said defendants now assert said claims, unlawfully, fraudulently, secretly, and without the knowledge and consent, direction, sanction or subsequent ratification of said pretended locators, or any of them, for the exclusive use and benefit and in the sole interest of the said L. B. McMurtry, or some other person than said persons whose names were so used, and with and for the sole and only purpose and in-

tent by such device, fraud, and concealment to secure to said L. B. McMurtry, and his assigns, or to some other person than such persons whose names were so used unlawfully and in violation of, and in fraud of the rights of this plaintiff, and in violation of Section 2331 of the Revised Statutes of the United States and the other laws of the United States, a greater area of mineral land than it was lawful at the date of such pretended location, or at the present time, to be embraced in a single location by the said L. B. McMurtry, or by any one individual person or corporation, or by an association of persons composed of a less number than eight persons, severally qualified to make a mining location.

XI.

Except as in this bill stated, the plaintiff has no other knowledge or information concerning the nature of any other claims asserted by the defendants herein, or any of them, and therefore leaves said defendants to set forth their respective [8] claims and interests.

In that behalf plaintiff alleges, because of the premises of this bill, that none of the defendants has ever had or now has any right, title or interest in or to, or any lien upon, said land, or any part thereof, or any right, title or interest in or to the petroleum, mineral oil, or gas deposited therein, or any right to extract petroleum, gas or other minerals from said land, or to convert or dispose of the petroleum oil or gas so extracted, or any part thereof; on the contrary, the acts of these defendants who have entered upon said land and drilled oil

and gas wells thereon and used and appropriated the petroleum oil and gas deposited therein, and assumed to sell and convey any interest in or to any part of said land, or any part of the petroleum oil or gas extracted therefrom, were all in violation of the laws of the United States and of the aforesaid order of withdrawal, and all of said acts are in violation of the rights of the plaintiff herein, and such acts interfere with the execution by the plaintiff of its public policies with respect to said land and the petroleum oil and gas therein, as hereinbefore set forth.

XII.

The present value of the land hereinbefore described exceeds Four Hundred Thousand Dollars ($400,000.00).

In consideration of the premises thus exhibited, and inasmuch as plaintiff herein is without full and adequate remedy in the premises save in a court of equity, where matters of this nature are properly cognizable and relievable, plaintiff prays:

1. That the said defendants, and each of them, may be required to make full, true and direct answer, respectively, to all and singular the matters and things hereinbefore stated and charged, and to fully disclose and state their claims to said [9] land hereinbefore described, and to any and all parts thereof, as fully and particularly as if they had been particularly interrogated thereunto, but not under oath, answer under oath being hereby expressly waived.

2. That the said land may be declared by this

Court to have been at all times from and after the 27th of September, 1909, lawfully withdrawn from mineral exploration, and from all forms of location, settlement, selection, filing, entry, or disposal under the mineral and nonmineral public land laws of the United States; and that the said location notice was fraudulently filed, and the said defendants did not acquire any rights thereunder.

3. That said defendants, and each of them, may be adjudged and decreed to have no estate, right, title, interest or claim in or to said land, or any part thereof, or in or to any mineral or mineral deposits contained in or under said land, or any part thereof; and that all and singular of said land, together with all of the minerals and mineral deposits, including mineral oil, petroleum and gas therein or thereunder contained, may be adjudged and decreed to be the perfect property of this plaintiff, free and clear of the claims of said defendants, and each and every one of them.

4. That each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually, may be enjoined from asserting or claiming any right, title, interest, claim or lien in or to the said land, or any part thereof, or in or to any of the minerals, or mineral deposits therein, or thereunder contained; and that each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from going upon any part or portion of said

land, and [10] from in any manner using any of said land and premises, and from in any manner extracting, removing or using any of the minerals deposited in or under said land and premises, or any part or portion thereof, or any of the other natural products thereof, and from in any manner committing any trespass or waste upon any of said land or with reference to any of the other natural products thereof.

5. That an accounting may be had by said defendants and each and every one of them, wherein said defendants, and each and every one of them, shall make a full, complete, itemized and correct disclosure of the quantity of minerals (and particularly gas and petroleum) removed or extracted, or received by them, or either of them, from said land, or any part thereof, and of any and all moneys or other property, or thing of value received from the sale or disposition of any and all minerals extracted from said land, or any part thereof, and of all rents and profits received under any sale, lease, transfer, conveyance, contract or agreement concerning said land, or any part thereof; and that the plaintiff may recover from said defendants, respectively, all damages sustained by the plaintiff in these premises.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, derricks, drills, pumps, storage vats, pipes, pipe-lines, shops, houses, machinery, tools and appliances of every character whatsoever thereon, belonging to or in the possession of said defend-

ants, or any of them, which have been used or now are being used in the extraction, storage, transportation, refining, sale, manufacture, or in any other manner in the production of gas, petroleum or petroleum products or other minerals from said land, or any part thereof, for the purpose of continuing, and with full power and authority to continue the operations on said land in [11] the production and sale of gas, petroleum and other minerals where such course is necessary to protect the property of the plaintiff against injury and waste, and for the preservation, protection and use of the oil and gas in said land, and the wells, derricks, pumps, tanks, storage vats, pipes, pipe-lines, houses, shops, tools, machinery and appliances being used by the defendants, their officers, agents, or assigns in the production, transportation, manufacture or sale of gas, petroleum or other minerals from said land, or any part thereof, and that such receiver may have the usual and general powers vested in receivers of courts of chancery.

7. That the plaintiff may have such other and further relief as in equity may seem just and proper.

To the end, therefore, that this plaintiff may obtain the relief to which it is justly entitled in the premises, may it please your Honors to grant unto the plaintiff a writ or writs of subpoena, issued by and under the seal of this Honorable Court, directed to said defendants herein, to wit: California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company,

L. B. McMurtry, J. M. McLeod, and Standard Oil Company, therein and thereby commanding them, and each of them, at a certain time, and under a certain penalty therein to be named, to be and appear before this Honorable Court, and then and there, severally, full, true and direct answer make to all and singular the premises, but not under oath, answer under oath being hereby expressly waived, and stand to perform and abide by such order, direction and decree as may be made against them, or any of them, in the premises, and as shall be meet and agreeable to equity. [12]

THOMAS W. GREGORY,
Attorney General of the United States.
ALBERT SCHOONOVER,
United States District Attorney.
E. J. JUSTICE,
Special Assistant to Attorney General.
A. E. CAMPBELL,
Special Assistant to Attorney General.
FRANK HALL,
Special Assistant to Attorney General. [13]

United States of America,
Northern District of California,
State of California,—ss.

George Hayworth, being first duly sworn, deposes and says:

He is now and has been since the 1st day of February, 1914, Chief of Field Division of the General Land Office at San Francisco, California, and prior to that time was, since July, 1910, a Special Agent of the General Land Office, doing field work

in California, and much of said work has been done in the investigation of facts relating to the lands withdrawn by the President as oil lands, and especially the lands withdrawn by order of September 27th, 1909, and by the order of July 2d, 1910.

That from examination of such land, or the facts in relation thereto, obtained by him or by special agents acting under his direction as such chief of Field Division, and from examinations of the records of the General Land Office, and the local land offices of plaintiff in said State of California, he is informed as to the matters and things as stated in the complaint with reference to the particular lands therein described; and the matters therein stated are true, except as to such matters as are alleged upon information and belief, and as to those, affiant after investigation, states that he believes them to be true.

GEO. HAYWORTH.

Subscribed and sworn to before me this 2d day of March, 1917.

[Seal] J. L. BALDWIN,
Deputy Clerk U. S. District Court, Northern District of California. [14]

[Endorsed]: In Equity—No. B–10. In the District Court of the United States for the Southern District of Calif., Northern Division. United States of America, Plaintiff, vs. California Midway Oil Co. et al., Defendants. Amended Bill of Complaint. Filed Mar. 5, 1917. Wm. M. Van Dyke,

Clerk. By R. S. Zimmerman, Deputy Clerk. E. J. Justice, A. E. Campbell, and Frank Hall, Attorneys for Plaintiff. [15]

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In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. B–10.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, J. M. McLEOD and STANDARD OIL COMPANY,

Defendants.

**Answer of California Midway Oil Company.**

Comes now defendant California Midway Oil Company, and severing from its codefendants, answers the purported bill in equity of the plaintiff herein as follows:

I.

This defendant alleges that the said purported bill in equity does not state facts sufficient to entitle plaintiff to the relief sought in and by its said bill, nor facts sufficient to give this Court jurisdiction in equity of plaintiff's claim therein urged; but to the contrary, the facts alleged in said bill, if sufficient to state a cause of action at all against

this defendant, states a cause of action at law and in ejectment whereby plaintiff seeks to recover the possession of the real property mentiond in paragraph II of said bill, with the mesne profits thereof.

II.

This defendant denies that either on September 27th, 1909, or at any time since said date, or at any time subsequent [16] to on or about January 1st, 1909, plaintiff has been entitled to the possession of the land described in paragraph II of its bill, or to the possession of any of the oil, or petroleum, or gas, or other minerals contained in said land; and defendant denies that at any of said times plaintiff has been or now is the owner of any of the oil, petroleum, gas or other minerals contained in said land, or the owner of said land at all, otherwise than subject to the right of possession of said land and the right to extract and remove all minerals therein of H. E. Bashore, R. B. Welch, W. A. Keenan, William Mahr, Herbert M. Walker, Eugene Metz, F. H. Romaine, Jr., and C. Rupert Walker all of whom at the time of entry and location hereinafter mentioned were duly qualified persons, entitled to locate mineral claims upon the public domain of the United States, and who on or about January 1st, 1909, lawfully and peaceably entered in and upon said land under and by virtue of the mineral laws of the United States, and pursuant to the invitation extended to them so to do by said laws, and took possession thereof, for the purpose of prospecting said land and the discovery of valuable mineral deposits thereon and

therein, and who did January 1st, 1909, validly locate said land under and pursuant to the provisions of the said mineral laws of the United States, as a placer mining claim, named "Montana Placer Mining Claim," for the purpose of developing petroleum, gypsum, and other minerals therein and thereon, and subject to the right of certain of the defendants herein, lawfully acquired by said defendants respectively from and under said locators.

III.

This defendant denies that on the 27th day of September, 1909, the President of the United States, whether acting by or through the Secretary of the Interior, or acting otherwise, or under any authority legally invested in him so to do, either duly or regularly withdrew or reserved any of the land described in [17] the said bill, either from mineral exploration or from all or any forms or form of location, settlement, selection, filing, entry, patent, occupation or disposal, under the mineral or nonmineral land laws of the United States or that since last-named date said land or any portion thereof has not been subject to exploration for mineral oil, petroleum or gas, or to occupation, or to the initiation or maintenance of any right under the public land laws of the United States. But to the contrary, this defendant alleges that on September 27th, 1909, and at all times since said date, the said land and the whole thereof was and has been in the lawful possession of the locators thereof named in paragraph II of this answer, and

of the various persons lawfully claiming under and in the right of said locators, and has been open as to all said persons to mineral exploration, location, occupation and disposal under the mineral laws of the United States, to the maintenance of the rights of said locators under said mineral laws, and of the rights of persons claiming under said locators: all of which rights of said locators were lawfully acquired by virtue of said location prior to said 27th day of September, 1909.

This defendant alleges that the withdrawal order of September 27th, 1909, mentioned and referred to in plaintiff's bill, with the exception of the description of the lands purported to be affected thereby, is in the words and figures following, to wit:

"TEMPORARY PETROLEUM WITHDRAWAL No. 5.

In aid of proposes legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or nonmineral public land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination";

and that on September 27th, 1909, and prior to said date, this defendant, California Midway Oil Company, was actually in the possession and occupation of the real property described in plaintiff's [18] bill of complaint, and was engaged therein and

thereon in the diligent prosecution of work leading to the discovery of oil and gas thereon; that such occupation and work on the part of this defendant was had and carried on under and by virtue of rights acquired by this defendant from and through said locators of said "Montana Placer Mining Claim"; that said "Montana Placer Mining Claim" was, at the date of said withdrawal order, had been theretofore, was at all times thereafter, and now is, an existing and valid location and claim, and as such not affected by the said withdrawal order under and by virtue of its own terms.

This defendant denies that, in violation either of the proprietary rights of plaintiff, or of any other rights of plaintiff, or in violation of any law of the United States, or any lawful order or lawful proclamation of the President of the United States, or in violation of any alleged order of withdrawal of the President of the United States, made September 27th, 1909, or at any other date, or in disregard of or contrary to, or by infringement upon the governmental policy adopted by the United States for the protection, conservation, disposal and use of the petroleum, oil and gas contained in said land, the said defendants California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, J. M. McLeod, and Standard Oil Company, or either or any of said defendants entered upon said land described in plaintiff's bill, at any time for the purpose of prospecting or exploring said land for petroleum or for gas or for

any other purpose; and this defendant further denies that said defendants, or either or any of said defendants, or the predecessors in interest of said defendants, entered upon said land or any portion thereof subsequent to September 27th, 1909, for any purpose whatever.

Admits that this defendant, subsequent to September 27th, 1909, extracted, produced and converted to its own use certain [19] oil and gas which had been discovered by it on and in said described land prior to September 27th, 1909, and this defendant alleges that it had the right so to do.

IV.

This defendant denies that it and the aforementioned locators of the "Montana Placer Mining Claim" had not discovered minerals open to discovery and location under the mineral laws of the United States on said land prior to September 27th, 1909, and denies that this defendant had acquired no rights on or with respect to said land on or prior to said date. This defendant for answer further alleges that prior to the said 27th day of September, 1909, this defendant, California Midway Oil Company, had acquired said rights to said land under, through and from said locators of said "Montana Placer Mining Claim"; that prior to said 27th day of September, 1909, this defendant, California Midway Oil Company, had been, and on said date was in the actual and diligent prosecution on said land of work leading to the discovery of oil and gas thereon, and was on said date a *bona fide* occupant and claimant of said land, and in the

diligent prosecution of the work aforesaid, and thereafter continued in the prosecution of such work to the discovery and production of oil and gas on said land.

V.

Denies that at any time after said land had been withdrawn from prospecting, exploration or entry, the defendants California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, and J. M. McLeod, or either or any of said defendants drilled oil or gas wells on said land for the extraction, production, conversion, or appropriation of petroleum, oil and gas therefrom, in violation of the proprietary rights of the plaintiff therein, or in violation of the laws of the United States, or of any proclamation or order issued [20] by the President of the United States, or particularly in violation of said order of withdrawal of September 27th, 1909.

Denies that this defendant at any time in disregard of, or contrary to, or by infringement upon the general governmental policies adopted and declared by the United States for the protection, conservation, use and disposal of petroleum, oil and gas in the land hereinbefore particularly described, and in other lands belonging to the United States, to the great and irremediable damage of the plaintiff, or to the great and irreparable injury of said land hereinbefore described, or to the great and irreparable injury of other lands belonging to the United States adjacent to said described land, has extracted, produced, converted or appropriated to

its own use from the land hereinbefore described, or other lands adjacent thereto belonging to the United States, large or any quantities of petroleum, oil or gas, and this defendant further alleges that plaintiff neither has nor lawfully can have any policies with respect either to the conservation, or to the use, or to the disposition of said land, or of the petroleum, or oil, or gas contained therein, for the reason that, pursuant to the policies long declared by the Congress of the United States with respect to the public mineral lands of the United States and the disposition thereof, as declared by the acts of Congress relating thereto, the said locators of the said "Montana Placer Mining Claim" had lawfully located the said land and the whole thereof, prior to said alleged withdrawal order, and to any alleged change in said policies, and that said defendants California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, J. M. McLeod, and Standard Oil Company, are each lawfully in the possession of portions of said land, claiming under and by virtue of said location.

The defendant denies that defendants California Midway Oil [21] Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, J. M. McLeod, and Standard Oil Company, or either or any of them are in any wise trespassing upon said land, or that either petroleum, oil or gas will be wrongfully taken by said named defendants, or either or any of them therefrom, or that said defendants, or either or any of

them will commit trespass or waste upon said land, to the irreparable or any injury of said land, or to the great or any damage to plaintiff.

VI.

Admits that this defendant California Midway Oil Company has drilled, maintained and operated oil and gas wells on said above-described land, but this defendant denies that it has extracted and produced, or extracted or produced petroleum, oil or gas from any of said wells in an unskilled, or negligent, or careless or unworkmanlike manner, so as to cause the inflow of large or unnecessary or unreasonable quantities of water into said well or wells, or into the oil sands, or oil reservoirs, in which petroleum, oil and gas are contained in said land, in such manner, or to such an extent, or in such quantities as to cause such water to infiltrate or saturate or impregnate any of said oil sands or reservoirs, or the petroleum or oil or gas therein, to the great or any damage of plaintiff, or to the great or irreparable or any injury of said land, or to the petroleum, or oil or gas deposits therein.

Denies that this defendant is now continuing so to do, or is threatening to or will at any time hereafter continue so to do, to the further great and irremediable or any damage to plaintiff, or to the further great or irreparable or any injury to said land, or to the complete or any extermination or destruction of the petroleum or oil or gas deposits therein.

VII.

This defendant admits that of the oil produced from [22] wells drilled by it on the said described land, certain quantities of the same have been used by it upon said land for fuel purposes, and the remainder sold, but this defendant alleges that no petroleum or oil or gas whatever has been wasted by it in its operations.

VIII.

Denies that each or any of the claims of the defendants herein, or either or any of them, is predicated upon or claimed directly or mediately through or under any pretended mining location, under the style of "Montana Placer Mining Claim" or any other style.

It is not true that said location purported and falsely pretended to have been on and for the land herein specifically described, on the 1st day of January, 1909, by and in the names of and for the exclusive use and sole benefit of H. E. Bashore, R. B. Welch, W. A. Keenan, William Mahr, Herbert M. Walker, Eugene Metz, F. H. Romaine, Jr., and C. Rupert Walker, as a pretended association of eight persons acting as locators, or under or through a pretended notice of such pretended location, which was, at the request or through the unauthorized and fraudulent procurement of one L. B. McMurtry, spread upon the mining records of the county in which said land is located, on the 5th day of January, 1909.

It is not true that not any of said defendants have acquired or could acquire, or cannot now law-

fully or rightfully assert any right, title or interest in and to the said land, or in and to the petroleum, oil or gas therein, or in or to any of the petroleum, oil or gas heretofore extracted or now being extracted, or which shall hereafter be extracted and produced therefrom under and by reason of the location of said "Montana Placer Mining Claim" or the notice thereof.

It is not true that said location and the notice thereof [23] were unlawful, or fraudulent or invalid, or have no effect either in law or in equity. It is not true that said location was not made and said notice was not caused to be recorded by such locators, or by any of them, acting in their own proper persons, or through or by any person duly authorized so to do by them.

It is not true that the said location was not made and the said notice not recorded in the interest of, or for the benefit or use of such locators, or any of them, either individually or as an association.

It is not true that such location was in truth and in fact made, and said notice in truth and in fact caused to be spread upon the said mining records by said L. B. McMurtry unlawfully or fraudulently or secretly, or without the knowledge, or consent, or direction, or sanction, or subsequent ratification of said locators, or any of them, for the exclusive use and benefit, and in the sole interest of said L. B. McMurtry, or some other person than said persons whose names appear on said location notice, or with or for the sole and only purpose and intent, by device, or fraud or concealment to

secure to the said L. B. McMurtry and his assigns, or to some other person than such persons whose names appear on said location notice, in violation and in fraud of the laws of the plaintiff, or in violation of section 2331 of the Revised Statutes of the United States, and the other laws of the United States, a greater area of mineral land than it was lawful at the date of said location, or at the present time, to be embraced in a single location, by the said L. B. McMurtry, or by any one individual person or corporation, or by an association of persons composed of a less number than eight severally qualified to make a mining location.

It is not true that this defendant asserts any claim of title to said land or any portion thereof deraigned or [24] through mesne conveyances from said L. B. McMurtry, but, on the contrary, this defendant alleges that it asserts title to a portion of said described land deraigned and by mesne conveyances from the said locators thereof, to wit, H. E. Bashore, R. B. Welch, W. A. Keenan, William Mahr, Herbert M. Walker, Eugene Metz, F. H. Romaine, Jr., and C. Rupert Walker.

IX.

It is not true that because of the premises of said bill of complaint, this defendant has never had, or has not now, any right, title or interest in or to, or any lien upon said land or any part thereof, or any right, title or interest in or to the petroleum, mineral oil or gas deposited therein, or any right to extract petroleum, gas or other minerals from said land, or to convert or dispose

of the petroleum or oil or gas so extracted, or any part thereof.

It is not true that any act of this defendant in connection with said land, either in the drilling of oil or gas wells thereon, or the use or appropriation of the petroleum, oil or gas deposited therein, or the assumption to sell or convey any interest in or to any part of said land, or any part of the petroleum, oil or gas extracted therefrom, was or is in violation of any law of the United States, or of the aforesaid order of withdrawal.

It is not true that any act of this defendant in connection with said land has been or is in violation of the rights of the plaintiff herein. It is not true that any such act or acts interfere with the execution by the plaintiff of its public policies or policy with respect to said land, or petroleum, oil or gas therein.

X.

This defendant further alleges that at all times on or since September 27th, 1909, plaintiff has had both notice and [25] knowledge, and has been fully aware that this defendant was in possession of a portion of said land, and was at large expense engaged in the prosecution of drilling for oil and producing oil therefrom. That for more than seven years immediately prior to the bringing of this action, plaintiff has had both notice and knowledge, and has been fully aware that this defendant was in possession of a portion of said land, and drilling thereon for the production of oil therefrom, and producing oil therefrom. That plaintiff

has wilfully and purposely lain by and made no objection whatever to the operations on said land of any of the defendants named herein, and has purposely suffered said defendants to expend large sums of money in the development of said land, for the production of oil therefrom, without in anywise objecting to said possession, or indicating to any of said defendants that plaintiff claimed that the possession of said land was in anywise contrary to law, or in violation of any rights of plaintiff; that said defendants relied on said acquiescence on plaintiff's part, and expended said moneys in reliance thereon, and this defendant alleges that this plaintiff is and ought to be thereby estopped from maintaining this action.

*X.*

That by the Act of Congress of the United States of February 11th, 1897, chapter 216, said Congress of the United States declared that all the public lands of the United States, containing petroleum or other mineral oils, and chiefly valuable therefor, were free and open to occupation, exploration and purchase by citizens of the United States and those who had declared their intention so to be; and that thereby the Congress of the United States extended to its citizens and to those persons who had declared their intention of becoming such citizens, an invitation to enter upon said public lands, to occupy and explore the same, and in the event of such occupation and exploration [26] demonstrating that said lands were chiefly valuable for petroleum or other mineral oils, to purchase said lands, as provided in and by the laws

of the United States and the regulations of the Department of the Interior and the General Land Office of the United States prescribed pursuant to law. That, relying upon said invitation and on or about January 1st, 1909, the aforesaid locators of said "Montana Placer Mining Claim" believing that the lands described in plaintiff's bill contained petroleum or other mineral oils and were chiefly valuable therefor, entered upon and occupied said lands and entered upon the exploration thereof for the purpose of determining whether the said belief on their part was well founded; that said locators made the location of said "Montana Placer Mining Claim" as hereinbefore alleged; that the defendants California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, and J. M. McLeod claim said land, or some title thereto or interest therein, under and by virtue of said location, and all of said claims are derived, mediately or immediately, from and through said locators; that relying upon said invitation of the Congress of the United States, and prior to September 27, 1909, this defendant expended in improvements on the said land, which improvements were necessary for the exploration thereof for the discovery of petroleum or other mineral oils, a sum in excess of twenty thousand dollars, and this defendant California Midway Oil Company has expended as the purchase price for the sixty acres claimed by it in said northwest quarter of section 32, township 31 south, of range 23 east, M. D. M., the sum of sixty thousand dollars, and has expended in the explora-

tion of said described portion of land and in the drilling of wells thereon for the discovery and production of petroleum, oil therefrom, a sum aggregating one hundred and thirty thousand dollars, making a total expenditure by this defendant of one hundred and [27] ninety thousand dollars; that all of said expenditures were made on the faith of and in reliance upon the said invitation of Congress extended in and by the said Act of February 11, 1897; that thereby plaintiff is and ought to be estopped from maintaining this action.

XI.

That for more than seven years prior to the bringing of this action, the defendants California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, and J. M. McLeod have been in the lawful and peaceable possession of all of the land described in plaintiff's bill, and continuously working the same as a mining claim under, by virtue of and in the right of the said "Montana Placer Mining Claim" location, without objection, let or hindrance on the part of plaintiff; that during all of said seven year period, plaintiff has been fully informed and has known of said occupation and working of said land by said defendants; that said plaintiff was on the 27th day of September, 1909, fully familiar with and cognizant of the condition of said land and all operations thereon looking to the development and discovery of oil and other minerals therein; and that from on or about January 1st, 1910, and while drilling and other operations involving an extensive outlay of money on said

land were in progress, various officers and agents of plaintiff, whose duty it was to examine and inspect said land, visited the same, and particularly visited and inspected the work then in progress by this defendant; and that at no time prior to the filing of the bill of complaint in this action did said officers or agents of the plaintiff, or either or any of them object to or in any manner protest against the operations being carried on by this defendant. That throughout all of said time it was the fact, and said officers and agents of said plaintiff knew it to be the fact, that if in the course of said operations, and as a result of the [28] expenditures being made in pursuance thereof as aforesaid, oil was discovered, the same would be brought to the surface and disposed of in the ordinary course of trade. That among the officers of the United States who so visited the said land during the time as aforesaid, and were cognizant of and familiar with all of the facts with reference thereto as aforesaid, and particularly with reference to the operations thereon and expenditures being made in pursuance thereof as aforesaid, were the Assistant Secretary of the Interior of the United States, the Commissioner of the General Land Office of the United States, the chief of the Field Division of the General Land Office of the United States, and various and sundry special agents of the Field Service of the General Land Office of the United States. That each, every and all of said officers and agents of the plaintiff who visited said land as aforesaid, did, as this defendant is informed and believes, and therefore alleges the fact to be, make written report to

the Department of the Interior of the United States with reference to the condition of said land and the operations thereon, from time to time, during the course of said visits, and, as this defendant is informed and believes and therefore alleges the fact to be, said Chief of the Field Division of the General Land Office, and Special Agents of said Field Service of the General Land Office, especially inquired of their superior officers, to wit, the Secretary of the Interior and the Commissioner of the General Land Office as to whether any objection should be made to said operations on said land and the expenditures being made pursuant thereto, and that said Chief of Field Division and Special Agents were instructed not to make any objection or protests against said operations, and that no protest or objection was ever made, but, on the contrary, said officers, by their acts and conversations upon the ground, approved of said operations, and this defendant believes honestly [29] and in good faith, that said operations met with the approval of said officers.

That as this defendant is informed and believes, and therefore alleges the fact to be, said officers and agents of the plaintiff, at the times of their visits to said land when production of oil was in progress thereon, obtained and secured correct and accurate data with reference to the quantity of oil produced, the persons to whom the same was sold, and the amount received therefor, and, as this defendant is informed and believes, and therefore alleges the fact to be, said plaintiff is now, was at the time of the filing of the complaint herein, and at all times has

been, in full possession of all the facts with reference to the production of oil from said land and the disposition thereof, and the price received therefor. That by reason of the facts alleged in this paragraph plaintiff is, and ought to be, estopped from maintaining this action.

XII.

That, as this defendant is informed and believes, and therefore alleges the fact to be, defendants California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, and J. M. McLeod, and each of said defendants at the various times required by law, made report and return to the plaintiff as to their respective incomes for the years 1910, 1911, 1912, 1913, 1914, 1915 and 1916 and that in and by said reports and returns there was included all proceeds received by them respectively from sales of oil produced from the land described in plaintiff's bill; that plaintiff knew that such returns included the said proceeds of sale; that with such knowledge on the part of plaintiff, plaintiff levied and assessed income taxes against each of said defendants upon their respective incomes for the said years, including the income received by each of said defendants from said sales of oil produced from said land described in plaintiff's bill, and that said defendants respectively [30] paid plaintiff said taxes, which were received by plaintiff with the knowledge on its part above alleged; that each of said defendants paid plaintiff the said taxes, relying upon plaintiff's acquiescence and acknowledgment, as

shown by its assessment of said taxes against said defendants, in the legality of said defendants' possession and occupation of said land, and the legality of said defendants' title to the oil extracted therefrom; that had not said defendants been induced thereto by plaintiff's acceptance of said reports and returns, and its imposition of taxes upon said proceeds of oil sales as evidencing plaintiff's acquiescence in the legality of said defendants' occupation of said land and title to the oil extracted therefrom, said defendants would not have paid said taxes; and by reason of such reports and returns, assessment and payment of taxes, plaintiff is, and ought to be, estopped from maintaining this action.

XIII.

That this defendant shortly after the issuance of the said withdrawal order of September 27th, 1909, consulted its attorney and counsellor, who was learned in the law, and recited to him all of the facts with reference to the location of said "Montana Placer Mining Claim" and the work done under said location, and all of the facts attendant upon the acquisition by this defendant of the title to said location, and inquired of its said attorney and counsellor with respect to the effect upon said location of the said withdrawal order, and said attorney and counsellor thereupon advised this defendant that said withdrawal order was invalid and ineffective should the same be claimed to relate to or affect the said land described in plaintiff's bill, that said location was a valid and subsisting location, and that the said locators, and their successors in interest, had the right to

occupy and possess said land and to drill and explore for oil therein and thereon and to appropriate [31] any oil discovered therein or thereon; that this defendant, acting and relying upon said advice and believing the same to be correct, honestly and in good faith and in the belief that it had the right to the possession of said land and to explore for oil thereon, continued in such possession and caused the work of drilling wells for oil thereon to be continuously prosecuted to the discovery of oil in such well; and that in all of its actions and conduct with reference to said land this defendant has acted in reliance upon and pursuant to the advice so given as aforesaid, in good faith, and believing the same to be correct.

WHEREFORE, this defendant prays that it may be declared by the judgment of this Court that the cause of action alleged by plaintiff in its said bill of complaint is a cause of action cognizable at law, and that said bill of complaint does not state any cause of action cognizable by a court of equity entitling plaintiff to relief by a court of equity; that this defendant have judgment that plaintiff take nothing by its said bill of complaint. But should the Court determine that said bill of complaint is sufficient to entitle plaintiff to be heard in a court of equity, then that the Court by its judgment shall decide and declare that plaintiff take nothing by its said bill, and that said bill be dismissed as to this plaintiff; that it be further declared by the decree of the Court that the location of the said "Montana Placer Mining Claim" was and is a valid location of the land described in

plaintiff's bill of complaint, under the placer mining laws of the United States; that said locators of said claim, and all persons lawfully claiming under them are entitled to possession of said land, and to develop the same for the minerals therein contained, and when found, to extract, remove and dispose of said minerals; that said locators and those lawfully claiming under them are also entitled to all and singular [32] such rights as are granted by the laws of the United States, and to a United States patent for the said "Montana Placer Mining Claim," and that this defendant in particular, by reason of its claim to occupation, and diligent prosecution of work upon, and expenditures of money in connection with, that portion of the land mentioned and described in plaintiff's bill of complaint, is entitled to the same, to wit, sixty acres, and that this defendant have such other and further relief as may be agreeable to equity, the premises considered.

GEO. E. WHITAKER,
Attorney for Defendant California Midway Oil Company. [33]

[Endorsed]: In Equity—No. B–10. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, vs. California Midway Oil Company et al., Defendants. Answer of California Midway Oil Company. Filed June 15, 1917. Wm. M. Van Dyke, Clerk. R. S. Zimmerman, Deputy. Geo. E. Whitaker, Attorney

at Law, Bakersfield, California, Attorney for Defendant California Midway Oil Company. [34]

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In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

No. B-10—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, L. B. McMURTRY, J. M. McLEOD, and STANDARD OIL COMPANY,

Defendants.

**Answer of Defendants Thirty-two Oil Company and J. M. McLeod.**

Come now the defendants Thirty-two Oil Company and J. M. McLeod, defendants in the above-entitled suit, and answer the amended bill of complaint herein as follows:

FIRST DEFENCE.

As and for their first defence herein these answering defendants herein admit, deny and allege:

I.

Admit that the defendants named in paragraph I of said amended bill of complaint are and were

corporations as therein alleged.

Admit that defendant J. M. McLeod is a citizen of the United States and a resident of the Southern District of California.

II.

Deny, that for a long time prior to or on September 27, 1909, or at all times since, or at any time, plaintiff has been, or now is, the owner, or entitled to the possession, of the following mineral oil and gas land, to wit:

> The Northwest Quarter (NW. ¼) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, Mount Diablo Base and Meridian, [35]

or of any part thereof, or of the petroleum, gas or any other mineral contained in said lands, or any part thereof. Admit that plaintiff is the holder of the naked title to said lands, but aver that such title is held subject to the rights and conditions in this answer hereinafter set forth.

III.

Admit that the President of the United States, then acting under claimed (but not legally invested) authority so to do, did, on September 27, 1909, by executive proclamation, made a withdrawal and reservation of certain areas of land, but deny that said order of withdrawal duly, or regularly, or at all, withdrew or reserved all or any of the land particularly described in said amended bill of complaint from mineral exploration, or from all or any forms of location, or settlement, selection, filing, entry, patent, occupation or

disposal, under the mineral and/or nonmineral lands laws of the United States, but, on the contrary, allege that at no time, did the President, or any other officer of the United States, either under authority of law or otherwise, withdraw said or any lands whatsoever from mineral exploration or occupation, and allege that said withdrawal did not affect or impair the rights of these defendants or of their predecessors in interest, or of those claiming by, through or under them or either of them in and to said lands, because, on September 27, 1909, and prior thereto, and at all times since, these defendants, their predecessors in interest, and those claiming by, through and under them, were *bona fide* occupants and claimants of said lands as oil and gas bearing lands, and were at said date, and at all times since, until the discovery of oil and gas in commercial quantities thereon, in diligent prosecution of work leading to discovery of oil and gas thereon, and that since said discovery the defendants have continuously remained in possession of said property, and have done each year the [36] annual assessment and development work thereon required by the mining laws of the United States, and in all that was done by these defendants and their predecessors and privies in interest, with reference to said land they acted fully in accordance with the regulations prescribed by law, and according to the local customs and rules of miners in said district.

IV.

Deny that, either in violation of the proprietary

and/or other rights of plaintiff, or in violation of the laws of the United States, or of any lawful order of the President of the United States, or in violation of the alleged order of withdrawal of September 27, 1909, or in disregard of, or contrary to, or by infringement upon any governmental policy then or thereafter adopted by the United States, for the protection, conservation, disposal and/or use of the petroleum, oil and/or gas contained in said land, or in lands belonging to the United States, these defendants, or any of the defendants herein, entered upon and/or took possession of the land hereinbefore described, at any time subsequent of the land hereinbefore described, at any time subsequent to September 27, 1909, for the purpose of prospecting, exploring, drilling oil wells for discovery, extracting, producing, converting, or appropriating to their own use, or to the use of any of them, petroleum, oil and/or gas therefrom. Deny that any of the defendants herein did so prospect, explore, drill wells for, or discover, extract, produce, convert or appropriate to their own use or to the use of any of them, oil or gas on September 27, 1909, or at any time subsequent thereto.

V.

Deny that none of the defendants herein had discovered petroleum oil, gas or other minerals on said northwest quarter prior to September 27, 1909. Allege that in May, 1909, [37] defendant California Midway Oil Company found and discovered oil in commercially paying quantities in a well

which it had drilled upon said northwest quarter.

VI.

Deny that none of said defendants was, on September 27, 1909, a *bona fide* occupant or claimant of said land, in diligent prosecution of work leading to discovery of oil or gas thereon or therein. Allege that these defendants long prior to September 27, 1909, had initiated rights on said land, and that these defendants and ~~its~~ their privies in interest, on September 27, 1909, were, and for a long time prior thereto had been, and ever since have been, *bona fide* occupants and claimants of said land, in open and notorious possession thereof, and at all said times, on, prior and for a long time subsequent to September 27, 1909, these defendants were engaged in diligent prosecution of work leading to discovery of oil and gas thereon, and, prior to September 27, 1909, had expended large amounts of money thereon, in acceptance of the public offer of plaintiff set forth in section 2319 of the Revised Statutes of the United States, and were, on and after September 27, 1909, actually engaged in the diligent prosecution of work leading to discovery of oil and gas thereon or therein, in accordance with the regulations then prescribed by law, and according to the local customs and rules of miners in said district.

VII.

Deny that long after or at any time after said alleged withdrawal order of September 27, 1909, any of the defendants herein drilled oil or gas wells

on said land for extraction, production, conversion, and/or appropriation of petroleum oil and/or gas therefrom, in violation of the proprietary or any rights of said plaintiff, and/or in violation of the laws of the United States, and/or in [38] violation of said alleged order of withdrawal of September 27, 1909, or in violation of any law or order, and/or in disregard of, contrary to, and/or infringement upon any governmental policy adopted and/or declared by the United States for the protection, conservation and/or disposal of petroleum oil or gas in said land, or in any lands alleged to belong to the United States, to the great and/or irremediable or to any damage of the plaintiff, and/or to the great and/or irreparable or to any injury of said land, or of other lands alleged to belong to the United States adjacent to said land, have extracted, produced, converted and/or appropriated to their own use, or at all, from the land hereinbefore described, or any lands adjacent thereto, any petroleum oil and/or gas.

Allege that these defendants and those claiming by, through and under them are in the lawful possession and occupation of the land hereinbefore described, and have produced and are now producing oil and gas therefrom in the ordinary and regular way, and have used and marketed said oil and gas in the ordinary course of their business, as the true and lawful owners thereof.

Allege that these defendants and those claiming by, through and under them will continue to operate their existing oil and gas wells upon said

land, but deny that such operation has caused, or that it can or will cause, great or irreparable injury or damage, or any damage whatever to said plaintiff. Allege that the operation of said wells and all of them is highly beneficial, and to discon*tue* or shut down the same would cause enormous loss and damage, to said land and to these defendants.

Deny that the amount of oil and gas produced and saved from said land is unknown to plaintiff, and allege [39] that same is fully known to plaintiff; that these defendants are informed and believe and therefore allege that said plaintiff has had every opportunity afforded it to ascertain the full production of said lands long prior to the commencement of this action, and has had at all times full information concerning the price and value of said oil and gas, and that there is not and never has been any occasion whatever for resorting to a court of equity, to ascertain either the amount or value of oil or gas produced from said land.

VIII.

Deny that the defendants in this suit or any of them, have drilled, maintained and/or operated oil and/or gas wells on the land hereinbefore described, *received/or* have extracted and produced petroleum oil and/or gas from such wells in an unskilled, negligent, careless and/or unworkmanlike manner so as to cause the inflow of any large, unnecessary and/or unreasonable quantity of water into such wells, or into the sands and/or oil reservoirs in which petroleum oil and/or gas are con-

tained in such land, in such or any manner or to such extent or in such or any quantities as to cause any water to infiltrate, saturate and/or impregnate such oil sands and/or reservoirs, and/or the petroleum oil and/or gas therein, to the great or irremediable or any damage to said land, or the petroleum oil and/or gas deposits therein.

Deny that the defendants in this suit or any of them are now continuing to cause great or irreparable or any damage or injury to said plaintiff or to said land, or to the complete or any extermination or destruction of the petroleum oil and/or gas deposits therein.

IX.

Deny that of the petroleum oil and gas heretofore extracted or produced from said land by the defendants or any [40] of them, large or any quantities have been wasted. Deny that large or any quantities have been sold or delivered to other persons or corporations whose names are to said plaintiff unknown, and cannot, for that reason, be stated in said amended bill of complaint. Deny that plaintiff is unable to state the amount, value, and/or quality of the said oil and gas which plaintiff claims to have been converted, appropriated, used, consumed, sold and/or delivered, and on its information and belief allege that none of the defendants has ever refused to furnish to the plaintiff all the information, records and data regarding said oil and gas and the disposition thereof, and the price and value thereof, which would be obtainable by or through the order of this

Court, and allege that the information freely tendered to plaintiff by each of said defendants, and never refused by any of them so far as these defendants are informed and believe, is full and adequate, and that there is no occasion or cause for any proceeding in this Court by way of discovery.

X.

Admit and allege that these defendants claim and have right, title and interest in all the hereinbefore described land, and in and to the petroleum oil and gas therein and extracted therefrom. Deny that such claim or right is predicated upon or claimed directly or indirectly or at all through or under any pretended mining location. Deny that the mining location referred to in paragraph X of said bill of complaint was or is a pretended location, or that the same falsely pretended to have been made on said land by or in the names of the persons referred to in paragraph X of said amended bill of complaint; deny that the said persons appearing as locators in said claim were or constituted a [41] pretended association of eight persons acting as locators, or under and through pretended notice of any pretended location. Deny that said placer mining location was, through the unauthorized or fraudulent proclamation of L. B. McMurtry, or of any other person, spread upon the Mining Records of the county in which said land is located; but, on the contrary, allege, on their information and belief, that said placer mining claim and location were duly and regularly made by and on behalf

of said locators, under written authority for such purpose, and that there was no agreement or understanding whatever that said location was or should be for the benefit of any other person or persons than said eight locators. Deny that said location or location notice was unlawful, fraudulent or invalid, or that the same has no effect, either in law or in equity, or that said notice was not made or caused to be recorded by said locators, through or by any person duly authorized so to do, and deny that said location was not made and said notice was not recorded in the interest of or for the benefit or use of said locators or any of them, either individually or as an association, and deny that said location was made and said notice was caused to be spread upon the Mining Records by said L. B. McMurtry, unlawfully, fraudulently, secretly, or without the knowledge or consent, direction, sanction or subsequent ratification of said locators, or that the same was for the exclusive use and benefit and in the sole interest of the said L. B. McMurtry or some other person than said persons whose names were so used, or that the same was for the interest at all of said McMurtry or of any other person or persons than said locators, and deny that said location was made with and for the sole and only purpose and intent, or with the purpose or intent at all, by such alleged device, [42] fraud or concealment, to secure to said L. B. McMurtry and his assigns, or to some other person than such persons whose names were so used, a greater area of mineral land than it was lawful, at the date of such location or

now, to be embraced in a single location by said L. B. McMurtry or by any one person or corporation, or by less than eight persons; and deny that said location was made unlawfully or in violation of or in fraud of the rights of the plaintiff, or in violation of Section 2331 of the Revised Statutes of the United States, or any other law of the United States.

On the contrary, these defendants, on their information and belief, allege that said several locators made and constituted said L. B. McMurtry their true and lawful attorney in fact, to locate for them and in their names, placer mining claims for oil; that said powers of attorney so executed by said locators were in writing, duly acknowledged and recorded; that said respective locators had no agreement or understanding whatever with said McMurtry, save and except as in said powers of attorney stated; that said locators had no purpose whatever to violate the laws of the United States, or to assist anyone else so to do, or to cheat or defraud either the United States or persons who should purchase upon the faith of their recorded powers of attorney and locations made thereunder; that each of said locators was of full age, a citizen of the United States and qualified to be a locator, and that said McMurtry had no arrangement whatever, either directly or indirectly, with said locators or either of them, that he should have any interest whatever in the locations which he should make, or that any other person except said locators should have any ownership therein. [43] Allege that these defend-

ants and each of them acquired their interest and rights in said lands upon the faith of the public records, in which appeared the power of attorney, duly and regularly made by each of said locators, and the location notice made, posted and recorded in accordance with the authority contained in said powers of attorney, and the conveyances made by said attorney in fact, in all respects as authorized by said recorded powers of attorney.

And these defendants allege that, after said locations had been made, and the fact known that enormous tracts of land had been located for them and in their names by the said attorney in fact, and that oil had been discovered upon said tracts, and contracts negotiated concerning the same, each of said several locators, in his own proper person, duly executed and acknowledged his written ratification of all that his said attorney in fact had done and of the binding force of said recorded power of attorney, which said ratification was made and executed in July or August of 1910.

Deny, on information and belief, that plaintiff, except as stated in said amended bill of complaint, has no knowledge or information concerning the nature of any other claims asserted by the defendants herein, or any of them.

Deny that none of said defendants has or ever has had any rights, title or interest in said land or any part thereof, or any right, title or interest in or to the petroleum, mineral oil or gas deposited therein, or any right to extract petroleum, gas or other minerals from said land, or to convey or dispose of the

petroleum or gas so extracted or any part thereof. Allege that these defendants and those claiming by, through and under them or either of them, have full right and title to said land, excepting only the naked legal title [44] thereto, held in trust by said plaintiff for said defendants.

Deny that the defendants who entered upon said land and drilled oil and gas wells thereon every "appropriated" any petroleum oil or gas deposited therein; and deny that any acts of the defendants, or any of them, with reference to said land and/or the mineral oil or gas deposited therein were in violation of the laws of the United States, or of said alleged order of withdrawal, or of any rights of the plaintiff, herein, and deny that the same interfered with the execution by said plaintiff of any public policies with respect to said land, or the petroleum oil or gas therein.

*XII.*

Deny that the present value of the land hereinbefore described exceeds $400,000.00. Allege that said land, prior to the improvements made thereon and for the benefit thereof by the defendants, was barren, desert land, and of virtually no value for any purpose; that it was not known or determined whether it had any value whatever for oil or gas; that the principal value which said land now has is due to the risk and chances taken by these defendants in sinking oil wells thereon, and in demonstrating that said property contains oil and gas in commercially paying quantities. [45]

SECOND DEFENCE.

As and for their second defence herein, defendants 32 Oil Company and J. M. McLeod admit, deny and allege:

I.

Repeat their said first defence herein and make the same a part hereof the same as though again fully set out herein.

II.

Allege that on January 1, 1909, the said northwest quarter was public land of the United States, open to location and purchase and unappropriated under the laws of the United States relating to land commonly known as "placer," and relating to lands containing petroleum and other mineral oils, and chiefly valuable therefor, and was at that time vacant public land.

Allege that on January 1, 1909, the eight persons named as locators in paragraph X of said bill of complaint, each of whom was then a citizen of the United States over the age of twenty-one, and all of whom had theretofore associated themselves together for the purpose of acquiring title to oil lands in Kern County, State of California, duly located said land under the name of "Montana Placer Mining Claim," and duly marked the same upon the ground, posted notice of said location upon said land, marked the boundaries thereof, and recorded a notice of said location in the records of said Kern County, and entered into possession and occupation of said land and every part thereof under said claim. That these defendants are informed and be-

lieve and therefore allege that said several locators and each of them made said location for their and each of their own use and benefit, and for the use and benefit of no other person whatever, and with the purpose of acquiring title to said land and to the gas, oil and other minerals therein contained, under the mining laws of the [46] United States; and that said location notice was duly recorded, on or about January 25, 1909, in the Records of said Kern County.

Allege that on long prior to September 27, 1909, said locators had executed to defendant McLeod their quitclaim deed for the said northwest quarter, and that in consideration thereof defendant McLeod had promised and agreed with said locators: that he would diligently prosecute drilling operations on said northwest quarter; that in the event oil was discovered on said northwest quarter in said operations, defendant McLeod would thereupon apply to the United States for letters patent to said quarter section, and would proceed to obtain patent therefor; and that when the receiver's final certificate was issued in said patent proceeding, defendant McLeod would reconvey to said locators the north one hundred acres of said quarter section.

Allege that thereupon defendant McLeod erected a standard drilling rig and other equipment upon said northwest quarter, for which said McLeod paid more than One Thousand Dollars.

Allege that long prior to September 27, 1909, defendant McLeod leased the south sixty acres of said

northwest quarter to defendant California Midway Oil Company.

Allege that long prior to September 27, 1909, defendant J. M. McLeod assigned to defendant 32 Oil Company all his rights in and to the said Lease to said California Midway Oil Company and that the consideration therefor was a large number of shares of the capital stock of defendant 32 Oil Company issued by it to defendant McLeod and other good and valuable consideration.

Allege that on or about August, 1910, defendants 32 Oil Company, J. M. McLeod ~~Company~~, and the said locators, [47] executed to defendant Associated Oil Company their quitclaim deed for the north one hundred acres of said northwest quarter.

Allege that from long prior to September 27, 1909, until the time of said conveyance to said Associated Oil Company, to wit, about August, 1910, said defendants J. M. McLeod, 32 Oil Company and California Midway Oil Company, were in open, notorious and continuous possession and occupation of all of said northwest quarter. That at all times thereafter defendants J. M. McLeod, 32 Oil Company and California Midway Oil Company have been in said possession and occupation of the South Sixty acres of said northwest quarter, and defendant Associated Oil Company of the north one hundred acres thereof.

III.

Allege that prior to May, 1909, defendant California Midway Oil Company commenced drilling a well for oil upon said northwest quarter. That said

California Midway Oil Company diligently and continuously prosecuted said drilling until May or June, 1909, and that in May or June, 1909, defendant California Midway Oil Company discovered and developed in said well oil in commercially paying quantities. That ever since said discovery defendant California Midway Oil Company has operated said well and has produced and obtained oil therefrom.

Allege that defendant Associated Oil Company, upon obtaining said north one hundred acres as aforesaid, took possession thereof, and thereafter diligently and continuously prosecuted drilling operations thereon until it had developed thereon oil in paying quantities, and that defendant Associated Oil Company has always since their completion, operated wells drilled by it on said land and has produced oil therefrom.

Allege that in such work of drilling, defendants California Midway Oil Company and Associated Oil Company expended [48] respectively, many thousands of dollars.

IV.

Allege that it was stipulated and agreed by said locators and defendant McLeod, and likewise by defendants California Midway Oil Company and Associated Oil Company as they acquired their said interests in said northwest quarter, that said northwest quarter should be developed and worked as one mining claim, and that any work done and any improvements or discovery made upon said northwest quarter by any of said persons or corporations,

should be done and made for the benefit and advantage of all of said northwest quarter ~~of the Northeast Quarter~~ of section 32 also.

V.

Allege that for and on behalf of said "Montana Mining Claim" these defendants have performed or caused to be performed ~~for and~~ on ~~behalf of~~ said northwest quarter more than one hundred dollars worth of labor during each and every year since January 1, 1909, and have caused to be expended during each such year more than one hundred dollars for improvements on said claim, which labor and improvements were all done and made for the purpose of discovering, developing and producing oil upon said claim.

VI.

Allege that these defendants and their said co-defendants herein acquired their respective rights and interests in said northwest quarter of section 32 as aforesaid, and made all of their said respective expenditures for and on account of said northwest quarter, and placed and made their said respective improvements and did their said work of development and operation upon said land, in good faith, without any knowledge of suspicion whatsoever of any actual, claimed or asserted infirmity, defect or invalidity, or of any, actual, claimed [49] or asserted lack of *bona fides* or necessary qualifications upon the part of said locators or any of them, in making said locations or any of them, and all in reliance upon the validity and *bona fides* of said locations and each of them.

That the said possession and interest of these defendants, and the respective interests and possession of their codefendants herein, in said northwest quarter, and their respective operations thereon, were at all times with the full knowledge of said plaintiff by and through examinations of said northwest quarter and of the things being done thereon made at various times by the agents of the Department of the Interior of the plaintiff and reports thereof by said agents to said Department; that notwithstanding such knowledge this plaintiff made no objection whatever at any time prior to the filing of the bill of complaint herein to the claim of title by said McLeod or of the claim to said northwest quarter by these answering defendants or of the respective claims thereto by those claiming as aforesaid by, through and under these answering defendants, or either of them, or to the possession, occupation and working of said northwest quarter by said persons and corporations as aforesaid, until the filing of said bill of complaint. And that on account of the belief and reliance on the part of these answering defendants and said Associated Oil Company and said California Midway Oil Company, and each of them, in the validity of said locations as aforesaid, and because of the great expenditures made by said McLeod and said defendants as aforesaid, and on account of the plaintiff's said knowledge thereof and failure as aforesaid to make objection thereto, these defendants allege and assert that this plaintiff is now estopped from claiming that it is entitled to the possession of said land described

in said amended bill of complaint or of the oil, gas or minerals therein, and that [50] the plaintiff is guilty of laches in the institution of this suit and in objection to the rights and title of these defendants and of any defendant herein claiming by, through or under these defendants or either of them, and that this plaintiff ought not now in all equity and good conscience to be heard to assert any claim or right to dispossess these defendants or any of them, or of the other defendants herein claiming an interest in said land, or to assert any claim of right or title to or on account of any part of the oil, gas or minerals therein or heretofore extracted therefrom. [51]

THIRD DEFENCE.

As and for their third defence herein, defendants, J. M. McLeod and 32 Oil Company admit, deny and allege:

I.

Repeat their said second defence and make the same a part hereof the same as though again fully set forth herein.

II.

Allege that on and long prior to January 1, 1909, the plaintiff, as the proprietor of the mineral lands on the public domain of the United States,—including placer mining lands and oil-bearing lands, among others,—had permitted and acquiesced in the entering upon said lands for the purpose of exploring the same and making discovery, and the taking and removing of the mineral contained in said lands, and this had continued for so many years

that it became recognized as fully acquiesced in, so that miners could proceed, as of right, in reliance upon this custom.

III.

Allege that the Congress of the United States, acting for and upon and concerning its said proprietory rights, had long prior to January 1, 1909, enacted the following as Section 2319 of the Revised Statutes of the United States:

> "All available mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found, to occupation and purchase by citizens of the United States,— . . . under regulations prescribed by law and according to the local customs or rules of miners in the several mining Districts.

And said provision was duly approved and has ever since been in full force.

Allege that in 1897 it was provided, by an Act of that year, duly passed by said Congress, and approved by the President [52] of the United States, that

> "Any person authorized to enter lands under the mining laws of the United States, may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefore, under the provisions of the laws relating to placer mining claims."

Allege that provision had been made by law and regulations prescribed under which, before patent

should be granted, a discovery was required to be made upon the claim for which patent was sought, and it was recognized by Congress and by the courts of the several States, including California, that a person prospecting and exploring for oil who had duly initiated his rights as to mining a claim, had the right to continue his operations without interference, until he had made discovery or abandoned the attempt.

IV.

Allege that provision had been made by law prior to January 1, 1909, whereby eight persons might join together and locate 160 acres of oil land, and perfect the right to patent by making one discovery for the entire tract.

That in the making of such discovery and the exploration leading thereto, it was well known to the plaintiff at all times that a period of from eight months to two years was usually required, and that the operator must expend large sums of money in preparing to drill for oil, and very large sums of money in prosecuting such drilling to discovery; and that this was especially true where the work was carried on in a desert remote from the source of supp*lied,* and where water was hard to procure and living conditions made it difficult to obtain labor, as was the fact regarding said northwest quarter.

V.

Allege that under these circumstances and said state of the law with regard to oil lands upon the public domain, all [53] of which existed on January 1, 1909, and thereafter until discovery was made

on said claim (which statutes and regulations were not governmental but were the authorized method by which the plaintiff as the proprietor of lands possibly containing oil or gas proposed and offered to sell the same) the locators hereinbefore referred to, on January 1, 1909, for the purpose and with the intent of accepting the offer so made by the plaintiff as a proprietor of the land described in said amended bill of complaint made and posted their notice of location of the placer mining claim named in said amended bill of complaint, and caused the same to be recorded, and thereafter, in reliance upon and in acceptance of the offer of the plaintiff, that said land was and should be open to occupation and exploration and purchase, and that, for the purpose of making discovery, they, having initiated their said right might proceed to explore upon said land, in accordance with the regulations prescribed by law, and according to the local customs and rules of miners in said District, —the said locators arranged to develop the north half of said section 32 in a group form, and conveyed their interest to said McLeod, and obligated him to proceed with the development of and upon said north half of said section 32. That in accordance with their initiated rights, and in further acceptance of the offer of the plaintiff acting as a proprietor of said land, these answering defendants expended large sums of money prior to September 27, 1909, in the erection of a drilling rig and other equipment upon the land described in said amended bill of complaint, and in other work thereon and also elsewhere, but for

the benefit of said last-mentioned land and leading to the discovery of oil thereon.

Allege that prior to, and after September 27, 1909, these defendants, in reliance upon the contract arising because of the proposal and offer of the plaintiff as the [54] proprietor of said lands, that said locators or persons acting in their right, might explore and drill for oil thereon until discovery should be made, or the effort to make discovery should be abandoned, and upon such discovery should have the right to purchase said lands under the regulations prescribed by law, and relying upon the fact that said proposal had been accepted, and money had been expended in substantial sums in the performance of the conditions prescribed by the plaintiff, and that all of said conditions had been met and performed, so as to entitle said locators and these defendants in their right and as their grantee, to go forward and make available the said expenditures by discovering oil and gas upon said property and perfecting its rights, to patent,—these defendants proceeded, as hereinbefore alleged, and performed each and all the conditions on their part to be kept and performed, until oil was discovered upon the land described in said amended bill complaint.

VI.

Allege that neither of these answering defendants nor any person or corporation claiming by, through or under them, or either of them, ever intended to or did in any wise abandon the right to go forward to discovery upon said claim, but said work was at all times diligently prosecuted, and in the manner

and with the degree of diligence recognized by the local customs of miners in said District, and known, approved and acquiesced in by the plaintiff.

That, because of said offer made by the plaintiff as the proprietor of said lands, and accepted and acted upon as hereinbefore alleged, these defendants acquired and had full right to go forward and perfect these defendant's equitable title to said property by making discovery of oil and gas thereon, and these defendants did, in fact, acting by and [55] through said California Midway Oil Company and Associated Oil Company, cause said discovery to be made, and said equitable title thereby to be perfected. [56]

FOURTH DEFENCE.

As and for their fourth defence herein defendants J. M. McLeod and 32 Oil Company admit, deny and allege:

I.

Repeat their third defence and make the same a part hereof the same as though again fully set out herein.

II.

Allege that for more than five years prior to the commencement of this suit these defendants, and their privies in interest, and those claiming an interest in said northwest quarter by, through and under these answering defendants, or either of them, have been in the lawful, peaceable, and continuous possession of the land first described in said amended bill of complaint, and continuously working and developing the same as a mining claim, without objec-

tion, let or hindrance from plaintiff or anyone else: that during all of said five years period plaintiff has been fully informed and has known of said occupation and working of said land by said defendants; and that the aforesaid work thereon has been openly, notoriously and continuously carried on, under claim of exclusive right thereto, with the full knowledge of plaintiff, and without any objection or protest whatever. [57]

FIFTH DEFENCE.

As and for their fifth defence herein, defendants J. M. McLeod and 32 Oil Company, respectfully reassert their claim heretofore made by Motion, and say that this court has no jurisdiction to hear or try this case on the equity side of the court, and allege that at the beginning of this action plaintiff was out of possession of the land described in said bill of complaint; that these defendants and those claiming by, through and under them as hereinbefore alleged in this answer, had been in open and notorious possession thereof, under claim of right, since long prior to September 27, 1909, under claim of claim of right; and that plaintiff has a full, speedy and adequate remedy at law, and these defendants are entitled to have this case sent and transferred to the law side of this court and to a trial by jury.

WHEREFORE, these defendants pray:

1. That this case be transferred from the equity side to the law side of this court, to be tried by a jury.

2. That the bill of complaint herein be dismissed;

3. That the Court find and decree that the plaintiff is and should be estopped to assert any right in

the land described in said bill of complaint as against these defendants;

4. For their costs herein expended;

5. And for such other and further relief as equity and good conscience shall require.

ROBERT M. PEASE,

Solicitor for J. M. McLeod and 32 Oil Company.

[58]

[Endorsed]: Orig. No. B–10–In Eq. In the District Court of the United States, in and for the Southern District of California, Southern Division. United States of America, Complainant, vs. California Midway Oil Company, et al., Defendants. Answers of Defendants J. M. McLeod and 32 Oil Company. Filed Jun. 20, 1917. Wm. M. Van Dyke, Clerk. By T. F. Green, Deputy Clerk. Received copy of the within answer this 20th day of June, 1917. Albert Schoonover, Attorney for Complainant. Robert M. Pease, Attorney at Law, 519 Story Building, Los Angeles, California, A–1508 Bdwy. 2761, Attorney for Dfts. J. M. McLeod and 32 Oil Company. [59]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. B–10.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, L. B. McMURTRY, J. M. McLEOD, and STANDARD OIL COMPANY,

Defendants.

**Answer of Defendant L. B. McMurtry.**

L. B. McMurtry does hereby make and file his answer to the amended bill of complaint on file in the above-entitled suit.

FIRST DEFENSE.

As and for his first defense to the cause of action set forth in said bill of complaint said defendant moves the court for an order transferring the above-entitled suit to the law side of the above-entitled court for trial and final disposition. Said motion is based upon the following grounds;

(a) Said bill of complaint affirmatively discloses that said suit is one in ejectment brought by the plaintiff out of possession to recover the possession of the lands described in the complaint and one for

damages for alleged past trespass upon said land described in the complaint, over both of which said subjects of litigation defendant alleges this court of [60] equity has no jurisdiction and for which plaintiff has a full, plain, speedy, complete and adequate remedy at law.

(b) That the facts set forth in the said bill of complaint fail to show any ground of equitable relief or any right to equitable relief.

Said motion is made and based and will be made and based upon the records and files in the above-entitled suit.

SECOND DEFENSE.

Defendant for a second and separate defense to the bill of complaint on file in the above-entitled and numbered suit alleges that the said bill of complaint does not state facts sufficient to constitute a cause of action or suit against this defendant and does not state facts sufficient to entitle the plaintiff to any relief as against this defendant and alleges further that the above-entitled court, sitting as a court of equity, has no jurisdiction of the subject matter of said suit because the allegations of the bill of complaint show that the main case made thereby and the chief object and purpose of the suit is to try the right to the possession of the land described in the complaint as between the plaintiff out of possession and defendant in possession of the land described in the complaint and for a judgment for damages for alleged past trespasses, for all of which alleged rights defendant alleges plaintiff has a full, plain, speedy, adequate and complete remedy at law and that a suit to en-

force or try said rights and claims of the plaintiff is without the jurisdiction of a court of equity

THIRD DEFENSE.

Defendant further answering said complaint alleges that this defendant is joined with a number of other defendants in this cause for several distinct and independent matters which [61] have no relation to each other and in which, or the greater part of which, this defendant is in nowise interested or concerned and ought not to be implicated or impleaded and alleges that this defendant is joined in a purported cause of action for an accounting and damages against certain of the defendants for purchasing and receiving oil from other of the defendants and is joined with other defendants in an action for trespass upon the premises described in the complaint, together with an action for damages for the conversion of oil and gas extracted by them or purchased by them or sold by them from said premises or a part thereof.

FOURTH DEFENSE.

And for his fourth defense to the said bill of complaint on file in the above-entitled and numbered suit this defendant admits, avers and denies as follows:

I.

Denies that for a long time prior to or on the 27th day of September, 1909, or at all times or at any time since said date the plaintiff has been or that it now is the owner of the land described in the bill of complaint or any part thereof; save and except defendant admits that on said September 27th, 1909, and at all times since said date the plaintiff has been

and now is the holder of the naked legal title to said land and as to that portion of the said quarter section described as follows, to wit:

Commencing at the northwest corner of the northwest quarter (NW. ¼) of section thirty-two (32), and running thence at a right angle southerly sixteen hundred and fifty (1650) feet; thence at a right angle easterly ten hundred and fifty-six (1056) feet; thence at a right angle northerly sixteen hundred and fifty (1650) feet to the northerly line of section thirty-two [62] (32); thence at a right angle westerly along said northerly line of section thirty-two (32) ten hundred and fifty-six (1056) feet, containing approximately forty (40) acres of land, more or less, all in township 31 south, range 23 east, M. D. B., and M., county of Kern, State of California, hereinafter in this answer called "defendant's forty (40) acres," and was and is the holder of said naked legal title only as trustee for the use and benefit of this defendent and his predecessors in interest, and that said defendant at the time of the commencement of this suit, for long prior thereto and ever since has been and now is the owner of the full equitable title to the said "defendant's forty (40) acres" of the said land described in the complaint herein under the circumstances, because and by reason of the facts hereinafter in this answer fully set forth. Denies that the said plaintiff either on the 27th day of September, 1909, or for a long time prior thereto or at all times or at any time since said date was the owner of or entitled to the possession of the oil, petroleum or gas or all or any other minerals contained in said

land described in the complaint or any part thereof, but, on the contrary, alleges that on said 27th day of September, 1909, for long prior thereto and ever since said date the defendants herein by and through themselves and by and through their predecessors in interest have been and still are in the actual *bona fide* possession and occupancy of the land described in the complaint and were on the said 27th day of September, 1909, and ever since said date, and at the time of the commencement of this suit, and for a long time prior thereto have been in the actual possession of said land and rightfully entitled to hold the possession thereof and to mine, extract and dispose of the minerals, oil and gas therein contained for their own use and benefit by virtue of the compliance by the defendants referred to and their predecessors in interest with [63] the laws of the United States relative to the sale and disposition of its mineral lands and by virtue of the Act of Congress of June 25, 1910, entitled: "An Act to authorize the President of the United States to Make Withdrawal of Public Lands in Certains Cases," and by reason of the further facts and circumstances hereinafter set forth. That at the time of the commencement of this suit and ever since the month of November, 1912, this answering defendant was in the actual, full and complete possession and occupancy of the said "defendant's forty (40) acres" of the said quarter section of land described in paragraph II of the complaint herein and ever since has been in the actual and continual possession of said land up to and including the date of the commence-

ment of this suit and on September 27, 1909, and prior to said date and at all times since said date the said defendants, and their predecessors in interest ever have been and at the time of the commencement of this suit were and still are actual *bona fide* occupants and claimants of the said land described in said complaint and the oil, gas, petroleum and mineral therein contained, and that on and before the said September 27, 1909, the said defendants and their predecessors in interest were in the diligent prosecution of work leading to the discovery of oil and gas upon said land and continued in such diligent prosecution of said work leading to the discovery of oil and gas upon said land.

II.

Denies that on the 27th day of September, 1909, the President of the United States, either acting by and through or by or through the Secretary of the Interior or under authority legally invested in him so to do or otherwise duly or regularly or at all withdrew or reserved all or any of the land described in the bill of complaint from mineral exploration or from all or any form of location or settlement or selection or filing or [64] entry or patent or occupation or disposal under the mineral land laws of the United States or at all. Denies that on or since the 27th day of September, 1909, that none of said lands has been subject to exploration for mineral oil or oil or petroleum or gas or to the occupation or to the initiation of any right under the public land or other laws of the United States, but defendant avers that on and for long prior to and

ever since said last named date all of the lands described in the complaint has been subject to such exploration, occupation and initiation of mineral rights and rights therein and thereto under any by virtue of the laws of the United States.

Defendant alleges that as to the lands described in paragraph II of the bill of complaint herein the defendants herein and their predecessors in interest and their successors were at the time of filing of said bill of complaint and for long prior thereto authorized by the provisions of said Act of Congress approved June 25, 1910, hereinbefore in this answer referred to, to continue in the occupation of the said land and its exploration and development for petroleum or gas or any other minerals therein contained for the reason that by the terms of said act of Congress the force and effect of the order of withdrawal of September 27, 1909, as to the said land described in said complaint was, as this defendant is advised by counsel learned in the law and therefore states the fact to be, vacated and made null and void.

Defendant alleges that on September 27, 1909, the said land described in the complaint contained and bore oil and gas and that the defendant and his predecessors in interest on said 27th day of September, 1909, and long prior thereto were in the *bona fide* occupation of and the actual claimants in the possession of the said lands as oil and gas lands. That the defendant and his predecessors in interest and their successors remained in [65] the actual and *bona fide* possession as claimants of said land ever since the said 27th day of September, 1909, and prior

thereto and that the said defendant and his predecessors in interest and their successors in the possession of said lands as aforesaid and as claimants thereof on said 27th day of September, 1909, were in the diligent prosecution of said work and did continue the same until discoveries of oil or gas upon said property.

III.

Denies that notwithstanding the premises or otherwise or in violation of the proprietary or other or any right or rights of the plaintiff or in violation of the laws of the United States or of lawful or any orders or order or proclamation or proclamations of the President of the United States or particularly or at all in violation of the said alleged or any other order of withdrawal of the 27th day of September, 1909, or any order of withdrawal or in disregard of or contrary to or by infringement on the governmental or any other policy adopted by the United States for the protection or conservation or disposal or use of the petroleum or gas contained in the said land described in the said bill of complaint or in other lands or land belonging to the United States the said defendants, or any of them, entered upon or took possession of the land in the bill of complaint particularly described or any part thereof long or at all subsequent to the 27th day of September, 1909, or not prior thereto for the purpose of prospecting or exploring or drilling oil wells or well for or discovering or extracting or producing or converting or appropriating to their own use or to the use of any of them petroleum or oil or gas

therefrom or at all subsequent to said September 27, 1909.

Denies that said defendants entered upon or took possession of the land described in the bill of complaint or any thereof [66] long or at all subsequent to the said 27th day of September, 1909, or not prior thereto either for the purpose of prospecting or exploring or drilling wells or well for or discovering or extracting or producing or converting to their own use or to the use of any of them petroleum or oil or gas therefrom, and in this behalf this defendant alleges that said defendants' predecessors in interest entered upon the lands described in said bill of complaint and took possession thereof long prior to September 27th, 1909, and alleges that on said 27th day of September, 1909, defendants' predecessors in interest were *bona fide* occupants and claimants of the said lands described in paragraph II of said bill of complaint and of the whole thereof, and alleges that he is informed and believes, and therefore states on such information and belief the fact to be that defendants' predecessors in interest to the said land were on said September 27th, 1909, in the actual possession of the said land described in said complaint and in the diligent prosecution of work leading to the discovery of oil or gas upon said land, and from said date until the acquisition by this defendant of his interest in said land in the diligent prosecution of such work leading to such discovery and thereafter the said work leading to discovery of oil and gas upon said land was continued and the said work

was diligently prosecuted by this defendant's predecessors in interest and their successors herein until the discovery in said land of petroleum or gas.

IV.

Answering paragraph V of said complaint, defendant admits that none of said defendants or any person or corporation under whom or through whom this defendant claims a right or interest to the land described in the said bill of complaint had discovered petroleum oil or gas or other minerals on or in said land prior to September 27th, 1909, but defendant denies that [67] the said land described in said complaint or any thereof was withdrawn by said or any alleged order of withdrawal on said September 27th, 1909, or at any other date or at all withdrawn and denies that none of said defendants or any person or corporation under whom or through whom they or any of them claim a right or interest in said land described in said bill of complaint mentioned had discovered petroleum or gas or other minerals or mineral on or in said land before said land was withdrawn by any order of withdrawal, and in this behalf this defendant alleges that prior to said 27th day of September, 1909, said defendants and their predecessors in interest and their successors became and ever since have been *bona fide* occupants or claimants of said land under valid location and claim made within the meaning and purport and effect of the laws of the United States and of the proviso in the said order of withdrawal of September 27th, 1909.

V.

Answering paragraph VI of said bill of complaint defendant denies that none of the defendants was on the 27th day of September, 1909, a *bona fide* occupant or claimant of said land or in the diligent prosecution of work leading to the discovery of oil or gas thereon or therein.

VI.

Defendant admits that the other defendants herein have drilled oil and gas wells upon the land described in the bill of complaint, which wells were drilled for the production of oil and gas found upon said land, but this defendant denies that the defendants or any of them long after the 27th day of September, 1909, or at any other time drilled oil or gas wells on said land in violation of the proprietary or any rights or right of the plaintiff herein or in violation of the laws of the United States or any thereof or of the proclamation or [68] proclamations or order or orders issued by the President of the United States or particularly or otherwise in violation of the order of withdrawal of September 27th, 1909, or any other date, or in disregard of or contrary to or by infringement upon the general or any governmental or other policy adopted or declared by the United States either for the protection or conservation or use or disposal of petroleum oil or gas in the land described in the complaint or other land or lands belonging to the United States or to the great or irreparable or any damage to the plaintiff or to the great or irreparable or any injury of the lands described in said bill of complaint

or to the great or irreparable or any injury of said land described in said bill of complaint or any thereof or to the great or irreparable or other injury or any injury to other land belonging to the United States. Denies that the defendants have extracted or produced or converted or appropriated to their own use or to the use of any of them from any lands adjacent to the land described in the complaint or any other land belonging to the United States large or any quantities of petroleum oil or oil or gas or that the defendants or any of them are now continuing so to do or that the defendants are or any of them is threatening to or will hereafter continue to do so either to the great or any irreparable or any injury to the said adjacent or other lands of the United States or to the great or any irremediable or any damage to the plaintiff. This defendant denies that he has and will continue to produce and dispose of oil and gas from "defendant's forty (40) acres" of the land described in the complaint herein, or any part thereof in violation of any proprietary rights of the plaintiff or any proclamation or order of the President of the United States or the order of withdrawal of September 27th, 1909, or any policy adopted or declared by the United States or from any land belonging to the [69] United States or to the great or irreparable or any injury to any land of the plaintiff or to the great or irreparable or irremediable or to the great or irreparable or irremediable or any damage to the plaintiff.

VII.

Answering paragraph VIII of the bill of complaint, denies that the defendants have or any of them has drilled or maintained or operated oil or gas wells on said land described in the complaint or any thereof or have or has extracted or produced petroleum oil or oil or gas from such wells in an unskilled or negligent or careless or unworkmanlike manner or so as to cause the inflow of large or unnecessary quantities or quantity of water into such wells or well or into the oil sands or sand or oil reservoirs or oil reservoir in which the petroleum oil or oil or gas are or is contained in such land or any thereof, or in such a manner or to such an extent or in such quantities as to cause water to infiltrate or to saturate or to impregnate such oil sands or sand or reservoirs or reservoir or the petroleum oil or oil or gas therein either to the great or irremediable or any damage of the plaintiff or to the great or irreparable or any injury of said land or to the petroleum or gas deposit therein or any thereof or at all in an unskilled or negligent or careless or unworkmanlike manner. On the contrary, defendant alleges that all wells drilled upon said land were drilled, maintained and operated and all oil and gas obtained and extracted and produced therefrom have been extracted and produced therefrom in a good, workmanlike manner and according to well known and approved methods.

Denies that the defendants are, or any of them is, now continuing to drill, maintain or operate gas or oil wells on or extract or produce petroleum

oil or gas from wells upon said land described in the complaint or any part thereof in an [70] unskilled, negligent or careless or unworkmanlike manner or to perform the acts or any of them complained of in paragraph VIII of the complaint herein or will continue so to do, or have or any of them has threatened or are or any of them is threatening so to do said or any of said acts to the further or any great or irreparable or any damage to the plaintiff or to the further or other great or irreparable or any injury to the land or any thereof, or to the complete or any extermination or destruction of the petroleum oil or oil or gas or any thereof deposited therein.

VIII.

Answering paragraph IX of said bill of complaint defendant denies that the petroleum oil and gas extracted and produced from said land or any thereof have or has been wasted by the defendants or either of them. Denies that this defendant sold and delivered to other persons and corporations oil and petroleum taken by the said defendant from the "defendant's forty (40) acres" of the land described in the complaint, or any part thereof, and denies that he has himself used oil and gas produced by him lawfully or at all from the said land.

IX.

Answering paragraph X of said bill of complaint this defendant admits that he claims some right, title and interest in the "defendant's forty (40) acres" of the land described in the bill of complaint

and in the petroleum oil and gas therein, and admits that each of the claims of said defendants herein to the said land and all the land described in the complaint is predicated upon and claimed directly and mediately through the mining location mentioned in the complaint; but denies that said mining location is a pretended mining location. Admits that said location was made on the 1st day of January, 1909, [71] in the names of the persons mentioned in said paragraph X of said complaint, other than this defendant, but denies that the said location was a pretense or was falsely pretended to have been made on the land described in the complaint. Denies that it was made by a pretended association of eight persons. Denies that the notice was a pretended notice or was a pretended notice of a pretended location. Denies that the said notice of location was unauthorized. Denies that the same was fraudulent; denies that the same was placed upon the mining records of the county in which the land is located on the 5th day of January, 1909, or at any other time through the unauthorized or fraudulent procurement of this defendant or any other person. But, on the contrary, defendant alleges that the said location was made by said defendant for and on behalf of the other persons named in paragraph X of the bill of complaint and for the benefit and use of the said persons and without fraud and without any intent to deceive or defraud any person, firm or corporation or the Government of the United States, and alleges that

the said locations were made by the said locators in absolute good faith.

Denies that none of said defendants has acquired or could acquire or cannot now rightfully or lawfully assert any right, title or interest in or to the land described in the complaint or in or to the petroleum oil or oil or gas therein or in or to any of the petroleum oil or gas heretofore extracted or now being extracted or which shall hereafter be extracted or produced therefrom under or by reason of said location referred to in paragraph X of said complaint or under the notice thereof; denies that the said locations mentioned in said paragraph X of said bill of complaint or the notice thereof were or either of them was a pretended location or a pretended notice of location or were or either of them was unlawful or fraudulent or invalid or that they have or either of them has no effect either [72] in law or in equity; denies that the said location mentioned in said paragraph X of said bill of complaint was not made or that the notice thereof was not caused to be recorded by said locators of said claim or by any of them acting in their own proper persons or through or by any person duly authorized so to do by them or that said location was not made or that said notice of location was not recorded in the interest of or for the benefit or use of said locators of said claim or any of them either individually or as an association or that said location was in, through or in fact made or that said notice of location was in through or in fact caused to be spread upon the said mining records

by this defendant unlawfully or fraudulently or secretly or without the knowledge or consent or direction or sanction or subsequent ratification of said locators of said claim or any of them, or for the exclusive or any use or benefit or in the sole or any interest of this defendant or some other person or persons than said persons who located said claim or with or for the sole or only or any purpose or intent by such or any device or fraud or concealment or at all to secure to this defendant or his assigns or assign or to some other person or persons than such locators unlawfully or in violation of or in fraud of the rights of the plaintiff or in violation of section 2331 of the Revised Statutes of the United States or of other or any law or laws of the United States, or otherwise, a greater or any area of mineral land than it was lawful at the date of such location or at the present time to be embraced in a single location by this defendant or by any one individual person or corporation or by an association of persons composed of a less number than eight persons severally qualified to make a mining location.

Defendant alleges that the persons named in paragraph X of [73] the bill of complaint herein as locators of the placer mining claim mentioned in said paragraph covering the land described in the bill of complaint herein were each and all of them citizens of the United States on January 1st, 1909, over the age of twenty-one years, and that each and all of them were on said date acting together in good faith for the purpose of locating said land

and acquiring title thereto under and in pursuance of the laws of the United States relating to the sale and disposal of mineral lands commonly known as placer claims, and that on said date said persons named in said paragraph, in compliance with said laws duly located said land and then and there each and all of them became vested with the title to an undivided one-eighth interest in and to said land, and that thereafter this defendant herein became vested by mesne conveyance with the title of said locators and each and all of them in and to the "defendant's forty (40) acres" of the land described in the complaint and ever since said time has been and now is the owner thereof. Defendant, however, claims no right, title or interest in or to any part of the land described in the complaint save and except the "defendant's forty (40) acres" thereof. Defendant further alleges that each of said locators on January 1st, 1909, and ever afterward was a *bona fide* locator of said land.

*XI.*

Denies that either because of the premises in the bill of complaint or otherwise or at all or for any reason none of the defendants has ever had or now has any right or title or [74] interest in or to or any lien upon said land or any part thereof or any right or title or interest in or to the petroleum or mineral oil or gas deposited therein or any right to extract petroleum or gas or other mineral from said land or to convert or dispose of petroleum oil or oil or gas so extracted or any part thereof. Denies that, on the contrary, or otherwise, the acts or the

act of those defendants who have or any of them who has entered upon said land or drilled oil or gas wells thereon or used or appropriated the petroleum oil or oil or gas deposited therein or assumed to sell or convey any interest in or to any part of said land or any part of the petroleum or gas extracted therefrom were or was all or any of them in violation of the laws of the United States or of the order of withdrawal mentioned in the complaint, or that all or any of said alleged acts are or is in violation of the rights or any right of the plaintiff herein or the said alleged acts or any of them interfered with the execution by the plaintiff of its public or any policies or policy with respect to said land or petroleum oil or gas or oil therein either as set forth in the bill of complaint of otherwise or at all. But, on the contrary, defendant alleges that the entry of his predecessors in interest upon said land and their and his entry thereupon and the development of said land for mineral was directly pursuant to and because of the invitation and encouragement so to do by the plaintiff and by virtue of the long established and continued policy of liberality by the Government, the plaintiff, towards miners and others desiring to develop mineral lands of the plaintiff [75] and acquire title thereto, which said policy, invitation and encouragement defendant alleges has existed continuously for more than forty years. That at and for a long time prior to the time of the promulgation of the withdrawal order of September 27th, 1909, it was universally under-

stood and it was the custom and rule of miners in California and elsewhere on the Pacific Coast that a valid petroleum and oil placer claim was obtained by entering upon and taking possession of land claimed to be petroleum land and causing notice of location to be filed with the recorder of the county in which the land was situated and by commencing actual work for the development of said land and claim at any time within one year after making, posting and filing of the notice of location and performing annual assessment work to the extent of $100.00 per year thereafter until discovery, all of which customs were well known throughout the Pacific Coast and in the United States of America, and had been invoked continuously for a period of more than forty years prior to the date of said order of withdrawal, which facts and customs and rule was at all times well known to plaintiff and frequently acted upon and recognized by plaintiff. That on and prior to January 1st, 1909, and for more than twenty years prior thereto, and on said date and at all times since said date, it had been well established and was the law as to petroleum placer mining claims that when discovery of oil or gas should be made upon said claims that said discovery should relate back to the date of the initial act, to wit: the date of the actual making of the location. That the said policy was acquiesced in and adopted by the Government of the United States [76] and that many hundreds of patents have been issued prior to the date of the commencement of this suit over a period of more than forty

years based upon the custom and rules and law hereinbefore referred to; that at the time of the location mentioned in the complaint herein the policy, invitation and encouragement of the plaintiff above mentioned concerning its lands in California and the development thereof and the said custom and rule of miners and the said law above referred to as to discoveries and the disposition of the mining lands of the United States had become so well settled and known and had been continuously and repeatedly and without objection acted upon by both the plaintiff and its citizens for such a long period of time prior to September 27th, 1909, that on said date the said policy, invitation, encouragement, mining customs and laws had become a rule of property and were thereafter by Act of Congress approved June 25th, 1910, entitled "An Act to Authorize the President of the United States to Make Withdrawals of Public Lands in Certain Cases," expressly recognized and reiterated by the making of the President's order of temporary withdrawal dated September 27th, 1909, wholly inoperative as to the lands described in the bill of complaint in this suit.

FIFTH DEFENSE.

For further answer and defense herein this defendant without re-engrossing alleges all of the averments and makes all of the denials hereinbefore set forth, and also further alleges:

That at and before the commencement of this action defendant alleged and claimed and still alleges and claims that he was in and was entitled to

the possession of the "defendant's forty (40) acres" of the quarter section of land described in the complaint [77] herein and to no more thereof than the "defendant's forty (40) acres," which said fact at the time of the commencement of said action and for long prior thereto was well known to the plaintiff herein; that said defendant does not now have and never did have and never did assert any right, claim or interest in or to or possession of the other part of said quarter section or any part thereof.

That the defendants, J. M. McLeod, Standard Oil Company, Associated Oil Company, Columbus Midway Oil Company, Thirty-two Oil Company, California Midway Oil Company, have not nor has either or any of them any right, title or interest in or to or possession of the said "defendant's forty (40) acres" of said quarter section, and that said defendants other than the Columbus Midway Oil Company do not and never did, either subsequent to or before the commencement of this action, assert any right to the said "defendant's forty (40) acres" of the said quarter section or any part thereof or lay any claim thereto, of any kind, character or description, or to the possession thereof or any part thereof which said facts were well known to the said plaintiff herein at the time of the commencement of this action.

That this defendant has not and never did have any interest with the said other defendants named herein or any of them in any part of said land described in the complaint herein; that this defend-

ant was not interested with the said defendants above named or any of them in any gas heretofore extrated from said land described in the complaint or any thereof or which might hereafter be extracted from said land or in any oil or other mineral heretofore extracted from the said land or any thereof or to be extracted from the said land or any thereof, [78] all of which facts herein asserted were well known to the plaintiff at the time of and before the commencement of this suit.

SIXTH DEFENSE.

For a further and separate defense this defendant without re-engrossment alleges all of the averments and makes all denials hereinbefore set forth and alleges:

That on the 27th day of September, 1909, the President of the United States signed and promulgated as such President an order which, with the exception of the accompanying lists therein referred to, is in the words and figures as follows, to wit:

"TEMPORARY PETROLEUM WITHDRAWAL

No. 5.

"In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or nonmineral public land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination."

That in the lists accompanying said order of withdrawal the land described in paragraph II of the bill of complaint herein was included.

That there existed previous to and on the 1st day of January, 1909, and at all times subsequent to said date in the State of California and in the Midway Mining District, in which said mining district the said land is and always has been situate, miners' regulations and rules and customs governing [79] the location, manner of recording and amount of work necessary to hold possession of placer mining and all oil, gas and petroleum mining claims within said district.

That under said regulations such mining claims could be located within said district by distinctly marking the location on the ground so that the boundaries thereof could be readily traced and by posting a notice of location in a prominent position upon the ground located as such mining claim and by recording a duplicate of the said notice of location in the office of the recorder of the county in the State of California in which the land located upon was situate, to wit: Kern County, California, and by prosecuting upon said mining claim work leading and tending to the discovery of oil or gas on or in the ground described in the notice of location.

That the said Midway Mining District at all the times mentioned herein was in said Kern County.

That in the year 1909 and previous to the 27th day of September, 1909, the predecessors in interest of this defendant had located all of the land de-

scribed in the bill of complaint according to the provisions of the mineral land laws of the United States and the rules, regulations and customs of miners of the district in which said land was situate for and as a placer claim for the purpose of developing petroleum and other minerals thereon and therein and that the said land was then duly and legally located by the persons named as locators in the bill of complaint herein.

That the said location was made by marking on said land the boundaries of the quarter section described in the bill of complaint so that the same could be readily traced and a notice of said location was posted upon the ground and a copy of said [80] notice was immediately filed for record in the office of the recorder of the county of Kern, State of California.

That defendant is informed and believes, and therefore alleges the fact to be, that from on or about the 1st day of January, 1909, the said locators or someone in their interest or the successors of said locators and the predecessors in interest of this defendant in accordance with law and the regulations and in accordance with the then well known and existing local customs and rules of miners in said district began to and did diligently and continuously prosecute work on said mining claim leading and tending to a discovery of oil and gas upon the said mining claim, described in the complaint and said work leading to and tending to a discovery was continuously and diligently performed until the discovery of oil and gas on said claim.

This defendant alleges the fact to be that at the time of the signing and the promulgation of the said order by the President of the United States the predecessors in interest of this defendant did have and then owned an existing and valid location and claim to said land within the meaning of the said order of withdrawal.

Defendant avers that from the 1st day of January, 1909, defendant's predecessors in interest in said mining location herein mentioned and said defendant's predecessors in interest and their successors in interest in said mining location herein mentioned and said defendant have been in the continuous and actual occupancy of the said land described in the bill of complaint herein.

Defendant avers that by reason of the foregoing facts the said land described in paragraph II of said bill of complaint [81] at the date of the signing or promulgation of the said order of withdrawal and for a long time prior thereto and since said September 27th, 1909, has not been and was not "public land" within the meaning of said term as employed in the said order.

SEVENTH DEFENSE.

That for more than six years prior to the beginning of this action this defendant and his predecessors in interest have been in the lawful and peaceable possession of the "defendant's forty (40) acres" of the quarter section of land described in the complaint, and that the predecessors in interest of said defendant and their successors in interest have been in the lawful and peaceable possession

of the land described in the remaining half of said quarter section of said land, and that for more than six years last past the said land or some part thereof has been continuously worked by said defendants and their predecessors in interest as a mining claim without objection, let or hindrance on the part of the plaintiff or anyone else or any attempt being made or notice given to either or any of said defendants during said period of five years.

That for more than six years prior to the commencement of this suit the plaintiff has been fully informed and has fully known and has been fully advised of said occupation and working of the said land as aforesaid by the defendants and the predecessors in interest of the said defendants, and that at the time of the commencement of this suit and for more than six years prior thereto and prior to September 27th, 1909, there had been and the plaintiff at all times well knew that there had been an inception of development on said land. That by reason of the foregoing the plaintiff is and ought to be estopped from maintaining this action. [82]

EIGHTH DEFENSE.

And for a further answer and defense herein the defendant refers to and by such reference without re-engrossment alleges all of the allegations and makes all denials hereinbefore set forth and does hereby further allege:

I.

That on September 27th, 1909, and long prior to said date the defendant's predecessors in interest were in the actual possession and occupation of

the real property described in the bill of complaint and on said 27th day of September, 1909, there was and had been an inception of development work by defendant's predecessors in interest. That on said date defendant's predecessors in interest were in the actual occupation and possession of adjacent and adjoining land to the land described in the complaint and all of which land had been located for oil, gas or other mineral as placer mining claims and that the said defendant's predecessors in interest or their successors were operating said land described in the bill of complaint and the land adjacent and contiguous and adjoining thereto as one enterprise so far as development of said land was concerned on and long prior to the said 27th day of September, 1909. That the land described in the complaint and said other lands were then being held under locations as placer claims by the locators mentioned in the bill of complaint herein and other locators, all of whom were citizens of the United States and who duly located the said land pursuant to the laws of the United States, its rules and regulations, and the rules, regulations and customs of miners of the Midway Mining District in the county of Kern, State of California, in which District, County and State said lands were and are situate. [83]

That said predecessors in interest of this defendant never abandoned the said land or the mining locations thereon and thereof and that prior to the said 27th day of September, 1909, there had been duly filed in the office of the recorder of the county

of Kern, State of California, by the said locators mentioned in the bill of complaint herein notices of the location of said lands for and as placer mining claims as aforesaid and that ever since the making and filing of said locations and up to and including the 4th day of August, 1910, the predecessors in interest of this defendant under said mining locations and their successors have been in the actual and full and undisputed occupation of said lands under said mining claims and on the said 27th day of September, 1909, as this defendant is advised and believes, and therefore alleges the fact to be, were by themselves or their agents diligently and continuously operating the said land described in the complaint and other lands adjoining and adjacent to said lands to the end that discovery of oil or gas should be made upon the land described in the bill of complaint herein and that said operations continued without interruption until the "defendant's forty (40) acres" of said land described in the bill of complaint herein was conveyed to defendant herein and until the defendant herein was let into the possession of said land and until discovery of oil which was made on the mining claim described in the complaint herein.

That on said 27th day of September, 1909, and prior to said date and at all times intervening from said date up to the conveyance of said property to this defendant and up to the delivery of the possession of the said "defendant's forty (40) [84] acres" of said land described in the bill of complaint herein by defendant the Columbus Midway

Oil Company to this defendant the plaintiff herein was fully informed as to the said land and as to the said adjacent lands and as to all thereof and as to the possession thereof as herein alleged and as to the development thereof, and the said plaintiff at all times well knew that the said lands were occupied by said locators and in their behalf and well knew that work had been and was being done by the defendant's predecessors upon the said land described in the complaint herein and the other lands hereinbefore mentioned adjacent thereto by the defendant's predecessors and their successors, all of which work was leading to the discovery on the land described in the complaint herein of oil and gas; and said plaintiff well knew and was fully and completely informed and advised as to all other facts alleged in this entire answer.

Defendant alleges that he is informed and believes and therefore alleges the fact to be that the plaintiff herein caused the said land described in the bill of complaint herein and the said adjacent land above mentioned, alleged herein to have been operated as one enterprise by the predecessors in interest of this defendant and the successors of said predecessors in interest to be closely and repeatedly examined prior to September 27th, 1909, and thereafter during the years "1909" and "1910," and frequently thereafter until commencement of this suit.

Defendant alleges that at all times mentioned herein and at all times subsequent to the 27th day of September, 1909, and up to and until the commencement of this suit said plaintiff was fully aware

of all work being had and done upon the said land described in the complaint herein and upon other land [85] contiguous and adjacent thereto and of the claim of the said locators and their successors in interest as to the work being done upon said lands.

That at the time of the making of the locations of the said lands for and as placer mining claims and of all thereof, including the land described in the complaint herein, the said lands were arid and waste lands and did not equal in value the sum of $2.50 per acre.

That for more than six years prior to the bringing of this action plaintiff had full and complete notice and knowledge that the said land described in the complaint herein was in the possession of the defendant and the defendant's predecessors and their successors and that they were drilling thereon for the production of oil and gas therefrom and were in fact producing, selling and disposing of oil and gas from said land.

That the defendant's predecessors, the said locators and the successors of said locators from and including the year "1909" and at all times up to the commencement of this suit and for more than six years before the commencement of this suit were continuously expending large sums of money upon the said land described in the complaint herein and the development of the lands adjacent thereto and the said enterprise above mentioned for the production of oil and gas from each and all of said mining claims.

That upon the particular mining claim mentioned and described in the complaint herein there was expended many tens of thousands of dollars in the construction of wells, laying of pipe-lines, telephone and telegraph lines, tanks, wagon roads, buildings, tools and equipment, all of which was done openly and publicly by the said defendant's predecessors in [86] interest and with the full knowledge and the full continuous knowledge of the said plaintiff herein.

That never at any time prior to the commencement of this suit was any demand made upon the said locators of said mining claim or upon any person in the possession of the same or any part thereof or of any of said adjacent lands for the possession thereof by the plaintiff or any one in the plaintiff's interest, and never at any time prior to the commencement of this suit was any notice, written or verbal, given by the said plaintiff or any of its officers to this defendant or to the predecessors in interest of this defendant or to the said locators or to the successors to the interest of said locators to said lands or any thereof to cease operations upon said land or to remove therefrom any improcements, buildings, tools or equipment or to cease laying pipe-lines, telephone and telegraph lines or wagon roads across or through the said lands or any thereof; nor was any notice of any kind given to the said defendant or to the predecessors in interest or successors of said locators that they were expending said large sums of money upon said land at their peril or without recognition of

their rights or claim by the said plaintiff, nor was any notice ever given by said plaintiff to this defendant or to his predecessors in interest or successors of said locators or to any of them that the said claims of the said locators or of this defendant's predecessors in interest or the successors of defendant's predecessors in interest were not the holders of a location upon the said land or of a valid and existing claim or location upon said land at the time of the making of the withdrawal order in this answer hereinbefore referred to, nor was there any notice at any time subsequent [87] to said 27th day of September, 1909, or at any time prior thereto given to this defendant or the defendant's predecessors in interest to the effect that the plaintiff disputed the said rights of this defendant and his predecessors in interest in and to the said land nor was there ever any demand made upon said defendant or his predecessors in interest on or subsequent to September 27th, 1909, that they desist from proceeding with development work upon said land or any thereof herein mentioned or the land described in the complaint herein or any part thereof, nor was any demand made upon the said defendant or any of his predecessors in interest at any time prior to the commencement of this suit for the delivery to the plaintiff of any mineral product, oil or gas or any product taken from the said land or produced upon the said land, nor was any notice ever given to this defendant herein or his predecessors in interest not to market or dispose of any oil, petroleum or gas or other mineral produced

or extracted or taken from the said land, nor was any notice of any kind, character or description at any time given by the plaintiff prior to the commencement of this suit that the plaintiff claimed subsequent to September 27th, 1909, that the possession of this defendant and his predecessors in interest were in anywise contrary to law or that the said possession was not under a fully recognized location and valid and existing claim.

That the said plaintiff at all times knew ever since the 27th day of September, 1909, that the said defendant's predecessors and the successors of defendant's predecessors were expending large sums of money upon the said land and creating a value to the said land and to adjacent lands belonging to [88] the Government of the United States.

That the plaintiff and its officers well knew that this defendant and this defendant's predecessors in interest were relying upon the assent and acquiescence of the plaintiff in the occupation and improvement of the said land and the production from the said land and particularly the land described in the complaint herein of oil and gas.

That the plaintiff well knew at all times that the defendant's predecessors in interest and their successors in interest were expending large sums of money upon said land relying upon the acquiescence and assent hereinbefore set forth; that the plaintiff well knew that the defendant's predecessors in interest were maintaining and claiming and asserting that they were making said improvements and proceeding to the further development of the said

land and improvements thereon to the extent of many hundreds of thousands of dollars upon the understanding that defendant and his predecessors in interest had accepted an offer of the plaintiff herein to purchase the said land as proffered by the United States of America.

That for more than six years prior to the commencement of this suit and continuing from October, 1910, with the full knowledge and acquiescence of the plaintiff herein, this defendant's predecessors in interest and their successors did expend upon the land described in the complaint herein and for the improvement thereof and in work leading to the discovery of oil and gas thereon many tens of thousands of dollars and did pay for the purchase of the said land to the sellers thereof many tens of thousands of dollars, all of which was freely and openly spent without secrecy and with full knowledge to the general public and to the plaintiff. [89]

That all of said expenditures were made in good faith and in reliance upon the offer of the United States to dispose of and sell said lands, and fully believing in the representations made by the said locators hereinbefore set forth and fully believing and relying upon the fact that there was in fact an inception of development upon the land described in the bill of complaint herein and upon all of the lands described in the other actions hereinbefore referred to and that the predecessors in interest of this defendant at the time of the withdrawal hereinbefore mentioned were in the actual possession of said land and that up to the time of the delivery of possession to

the defendant by his predecessors in interest and that the said predecessors in interest were in the full and undisputed occupation of said land and all thereof and had commenced to and were diligently continuing work leading to the discovery of petroleum and gas upon the land described in the bill of complaint herein and other of said lands, and in fact believing that the said locators had a full and unquestioned and valid and existing claim to said land under the laws of the United States and that the same was fully recognized by the United States and its officers, and believing that the said plaintiff had fully acquiesced in the said claim as to development work, occupancy, right to occupancy of and the possession of said land and all thereof and had fully assented and acquiesced in the continuance of occupancy and possession of said land after the order of withdrawal of September 27th, 1909, and believing that the said plaintiff had recognized and was recognizing and had completely acquiesced in the claim of the defendant's predecessors in interest that they had an inception of development and that they had a valid and existing claim to the said land [90] at the time of and after said alleged withdrawal, and also that the said locations were valid and existing locations, and relying upon the said acquiescence and assent of the Government, plaintiff herein, this defendant did take title to said property last described.

That the plaintiff herein at no time made objection prior to the commencement of this suit to the mining of said land by this defendant's predecessors in interest or their successors to the removal from said land

and the disposal of the oil and gas produced from and mined upon said land; and by the payment during said period of large sums for taxes levied against said land and the improvements thereon and the product taken therefrom and also large sums assessed against said defendant's predecessors in interest by reason of the ownership of said lands for the general preservation of oil lands in said district including lands owned by plaintiff.

That during all of the period of time that the said defendant and his predecessors in interest were in possession of said land described in the bill of complaint herein and other lands hereinbefore referred to the said defendant's predecessors in interest and their successors did expend large sums of money in the care and protection of said land and in the preservation of the product obtained from the said land; that had the said defendant's predecessors failed to so do many hundreds of thousands of dollars in mineral products and lands would have gone to waste all of which facts were known to the plaintiff while this defendant's predecessors in interest were so protecting and preserving the said land and the products therefrom and therein; and this defendant alleges that frequently, subsequent to the said withdrawal order of September 27th, [91] 1909, the said land described in the bill of complaint herein and other lands referred to in this answer and the work being performed thereon by this defendant's predecessors in interest were visited by the plaintiff herein, its officers and agents, and the said plaintiff never at any time in anywise objected or in any manner protested

to said defendant or its predecessors in interest or objected to the operation of said land or to the improvement thereof or to the removal or marketing therefrom of any of the product from said land of either oil or gas.

That, on the contrary, this defendant is informed and believes and therefore alleges the fact to be that the said acts of the defendant's predecessors in the development, occupancy, and possession of said land, and disposition of the proceeds therefrom were fully approved, acquiesced in and assented to by the said plaintiff herein and no objection of any kind, character or description was ever made by the said plaintiff to the operation, maintenance, improvement and care of said lands by defendant, its predecessors in interest or their successors.

This defendant further alleges that for the years 1911, 1912, 1913, 1914, 1915, and 1916, this defendant and his codefendants made report and return to the plaintiff herein as to their respective incomes for all years from the year "1911" until the filing of the bill of complaint herein and that in all such reports and returns there was included all proceeds by this defendant's predecessors in interest herein from the sales of oil and gas obtained from the land described in the bill of complaint herein; that this plaintiff well knew that this return and report included the income of this defendant's predecessors in interest an successors derived from the sales of oil and gas extracted and produced from the land described [92] in the bill of complaint herein and the said land adjacent thereto, and said plaintiff so well knowing

the facts herein stated during each and all of said years did levy and assess a tax upon the incomes of each and all of the defendants and including a tax upon the income received by this defendant's codefendants from the sales of oil and gas produced from the land described in the bill of complaint herein.

This defendant further alleges that this defendant's codefendants herein, as he is informed and believes and therefore states the fact to be, did, pay to the said plaintiff said taxes so levied and assessed upon said income derived from the sale of oil and gas produced and extracted from the land described in the bill of complaint herein and said adjacent land and said taxes were received by plaintiff herein, with plaintiff's full knowledge of the facts herein stated during each and all and every of said years.

This defendant further alleges that the said plaintiff demanded the payment of said income tax from this defendant's codefendants; and this defendant further alleges that had the plaintiff not levied said tax and not demanded the payment of said tax and had it refused to accept the payment of said tax upon the ground that the said assessment was erroneous or illegal or upon the ground that the said defendants were not entitled to the income from or possession of said land or lands, the said taxes would not have been paid.

This defendant further alleges that by reason of the premises and by reason of the facts set forth in this answer the plaintiff herein is and ought to be estopped from maintaining this action. [93]

Wherefore, this defendant prays that the plaintiff

take nothing by this its suit and that the bill of complaint herein be dismissed.

2. That should the prayer of the defendant that the said bill of complaint be dismissed be denied, that this Court do order and direct that this cause be transferred from the equity to the law side of this Honorable Court to be there heard and tried by a jury.

3. And this defendant does further pray that failing the granting of the relief hereinabove prayed for, that this defendant do have such other and different and further relief as equity and good conscience shall require.

JORDAN & BRANN,
Attorneys for Defendant L. B. McMurtry.

[Endorsed]: B–10. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. In Equity. United States of America, Plaintiff, vs. California Midway Oil Company, et al. Answer of Defendant L. B. McMurtry. Filed Dec. 11, 1917. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Jordan & Brann, Attorneys at law, Monadnock Building, San Francisco. [94]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, L. B. McMURTRY, J. M. McLEOD and STANDARD OIL COMPANY,

Defendants.

**Decree of Dismissal.**

This cause having heretofore been heard and argued by counsel, and the Court now being fully advised in the premises, finds that the plaintiff is not entitled to the relief demanded or any part thereof,—

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the complaint be and is hereby dismissed.

R. S. BEAN,
Judge.

Dated, June 19th, 1919.

Decree entered and recorded this 23d day of June, 1919.

CHAS. N. WILLIAMS,
Clerk.
By Ernest J. Morgan,
Deputy.

**Assignment of Errors.**

Now comes the United States of America, the plaintiff in the above-entitled cause, and files the following assignment of errors upon which it will rely in its prosecution of appeal prayed for by it from the decree of dismissal entered in said cause by this Honorable Court on June 23, 1919:

I.

The Court erred in dismissing the bill of complaint and said cause, and in entering its final decree so dismissing said bill and cause.

II.

The Court erred in failing and refusing to hold, adjudge and decree that the plaintiff was and is entitled to the relief prayed for by it in its said bill of complaint, and in failing and refusing to adjudge and decree that the land described in said bill of complaint and the contents thereof were the perfect property of the plaintiff, free and clear of the claims of the defendants, or any of them. [98]

III.

The Court erred in finding and holding in substance and effect that the alleged mining location under which defendants claim was made by or for the persons in whose name it was made in good faith and with the intent on their part to lawfully acquire said land for their own use and benefit.

IV.

The Court erred in failing and refusing to find and hold that the alleged mining location under which the defendants claim was made in the interest

of and for the use and benefit of the defendant L. B. McMurtry, or some person or corporation other than the persons in whose names such location was made, to enable said McMurtry, or such other person or corporation, to acquire a greater acreage of the public mining land than could lawfully be acquired by one person under one mining location.

V.

The Court erred in finding and holding that the defendants California Midway Oil Company and Associated Oil Company "acted in the utmost good faith both in acquiring and purchasing the locators' interests and paying therefor, without notice, knowledge or suspicion that there was or could be any question about the *bona fides* thereof."

VI.

The Court erred in finding and holding in substance and effect that the defendants California Midway Oil Company and Associated Oil Company were innocent purchasers for value without knowledge or notice of any fraud or irregularity in the mining location under which they claim, and that such fact so found by the Court was "a circumstance not to be lost sight of in the consideration of the case" and thus holding in substance and [99] effect that such purchase by said defendants of the alleged interests of the persons in whose names such location was made entitled said defendants to rights to which otherwise they might not have been entitled.

VII.

The Court erred in finding and holding in sub-

stance and effect that the powers of attorney under which the alleged location of the land in suit was made, and under which the defendants claim, were executed by the persons whose names appear thereon, in good faith, for the purpose of lawfully acquiring for such persons public mineral lands.

VIII.

The Court erred in holding in substance and effect that the powers of attorney under which the alleged location of the land in suit was made, and under which the defendants claim, having been executed in good faith, any subsequent unlawful use of such powers of attorney by the agent, L. B. McMurtry, is immaterial.

IX.

The Court erred in failing to give proper weight to the evidence showing the circumstances under which the so-called Chicago powers of attorney were secured and the locations thereunder made in determining the *bona fides* of the alleged locations made by McMurtry under the so-called New York powers of attorney, under one of which locations the defendants claim.

HENRY F. MAY,
E. B. LACY,
Special Assistants to the Attorney General,
C. D. HAMEL,
Special Assistant to the United States Attorney,
Solicitors for Plaintiff. [100]

[Endorsed]: No. B–10—In Equity. In the District Court of the United States for the So. District of California, Northern Division. United

States of America, Plaintiff, vs. California Midway Oil Co. et al., Defendants. Assignment of Errors. Filed Dec. 15, 1919. Chas. N. Williams, Clerk. Maury Curtis, Deputy. [101]

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In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

No. B–10—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, L. B. McMURTRY, J. M. McLEOD, and STANDARD OIL COMPANY,

Defendants.

**Order Allowing Appeal.**

It appearing that the plaintiff herein has heretofore filed its petition for an appeal from the final decree made and entered herein on June 23, 1919, dismissing its bill of complaint, together with its assignments of errors,—

IT IS HEREBY ORDERED that said appeal to the United States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is, allowed.

Dated this 15th day of December, 1919.

R. S. BEAN,
District Judge. [102]

[Endorsed]: No. B–10. In the District Court of the United States for the So. District of California, Northern Division. United States of America, Plaintiff, vs. California Midway Oil Co. et al., Defendants. Order Allowing Appeal. Filed Dec. 15, 1919. Chas. N. Williams, Clerk. Maury Curtis, Deputy. [103]

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In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

No. B–10—IN EQUITY.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY et als.,
Defendants.

**Stipulation Re Statement of Evidence on Appeal.**

It is hereby stipulated and agreed that the statement of evidence lodged by the plaintiff, United States of America, with the clerk of the above-entitled Court on the 18th day of August 1920, may be approved by the Court or the Judge as the statement of evidence to be included in the transcript on appeal taken by said plaintiff in the above-entitled

and numbered cause to the United States Circuit Court of Appeals.

Dated April 4th, 1921.

HENRY F. MAY,
E. B. LACY,
Special Assistants to the Attorney General,
Solicitors for Plaintiff.

HENRY ACH and
EDMUND TAUSZKY,
Solicitors for Defendant, Associated Oil Company.

ROBT. M. PEASE,
Solicitors for Defendants, J. M. McLeod and Thirty-two Oil Company,

Apr. 12, 1921. [104]

JORDAN & BRANN,
Solicitors for Defendant, L. B. McMurtry.

GEO. E. WHITAKER,
Solicitor for Defendant, California Midway Oil Co.

PILLSBURY, MADISON & SUTRO,
Solicitors for Defendant, Standard Oil Company.

U. T. CLOTFELTER,
JORDAN & BRANN,
Solicitors for Defendant, Columbus Midway Oil Co. [105]

[Endorsed]: No. B–10—In Equity. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America vs. California Midway Oil Company et als. Stipulation Re Statement of Evidence. Filed Apr. 22, 1921. Chas. N.

Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [106]

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No. B–10—In Equity. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, vs. California Midway Oil Company, Associated Oil Company, Columus Midway Oil Company, Thirty-two Oil Company, L. B. McMurtry, J. M. McLeod, and Standard Oil Company, Defendants. Statement of Evidence. To be Included in Transcript on Appeal in the Above-entitled Cause. Lodged Aug. 18, 1920. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk.

Settled and Filed Apr. 22, 1921. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [107]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

No. B–10—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, THIRTY-TWO OIL COMPANY, L. B. McMURTRY, J. M. McLEOD, and STANDARD OIL COMPANY,

Defendants.

**Statement of Evidence to be Included in Transcript on Appeal in the Above-entitled Cause.**

This cause came on for trial March 10, 1919.

APPEARANCES:

FRANK HALL, Esq., Special Assistant to the Attorney General, and CHARLES D. HAMEL, Esq., Special Assistant to the United States Attorney, for Plaintiff.

GEORGE E. WHITAKER, Esq., for Defendant California Midway Oil Company.

HENRY ACH, Esq., and EDMUND TAUSZKY, Esq., for Defendant Associated Oil Company.

ROBERT M. PEASE, Esq., for Defendants Thirty-two Oil Company and J. M. McLeod.

Messrs. JORDAN & BRANN, by WALTER S. BRANN, Esq., for Defendant L. B. McMurtry and Columbus Midway Oil Company. [108—1]

**Deposition of L. A. Shadburne, for Plaintiff.**

L. A. SHADBURNE, called by plaintiff on April 4, 1917, testified by deposition as follows:

I reside at 1019 Foster Avenue, Chicago, Ill. I am in the automobile business. Have lived in Chicago fifteen years. In 1903 I was with the American Lucol Company of New York. Knew L. B. McMurtry about thirty years ago in San Francisco, where I was born and raised. Met him in Chicago in 1903. I was stopping at the Great Northern Hotel and met him in the corridor. He made me a proposition to sell stock for him and

(Deposition of L. A. Shadburne.)

I went to work about two weeks before Christmas, and continued about a year selling stock in the Oriental Oil Company. Yes, he explained to me about the land he controlled in California. Q. Did he ask you to do anything respecting the acquisition of further lands or more lands in the State of California? A. I do remember him asking me to take a paper of some kind and description, anyhow, I can't hardly say, it was some paper that he had made out, and wanted me to deliver it to someone, I think it was to this man Dunbar. I introduced McMurtry to Dunbar. Don't think McMurtry told me the nature or purport of this paper. No, he didn't say anything about a power of attorney being secured to locate oil lands. He wanted me to deliver it to Dunbar, who was to get some signatures to it. I knew nothing about its contents. Later I think I got this paper back in the sealed envelope and mailed it to McMurtry. I never read the paper and don't know who signed it. I sent it to McMurtry at his instigation. He was president of the company, and, if you will pardon me, it is hard to refresh my memory on these things, it is so long ago. But I have a faint recollection of him mailing me this paper later, sealing and giving it to me and telling me to give it to Mr. Dunbar; and Mr. Dunbar was to get some signature, and if Dunbar didn't mail it back to him I was to go out there and get it and mail it to him, I remember that. I had no conversation [109—2] with Dunbar about this paper. Think a man

(Deposition of L. A. Shadburne.)

by the name of Love, who was cashier for the Bowles Live Stock Company at the Stock Yards, returned it to me. Am not sure who gave it back to me, but have a recollection of seeing Love when in there. Don't remember whether I delivered more than one paper to Dunbar; nor do I know how many papers were in the envelope I sent to McMurtry, or who signed them. I was assistant secretary of the Oriental Oil Company so I could sign stock for McMurtry; acted only in Chicago. All I know about the lands the Oriental Company owned or held under contract or leases is what I saw in letters and papers that McMurtry had. I severed my connection with this companw because McMurtry took all the money and didn't pay us. The lands held by this company were in the Coalinga District. Yes, McMurtry said they held 1,000 acres on which were three wells, in the Northern Midway, Midway Valley, or Kern County Valley. I don't know the description of these lands or the names of the claims or what became of these holdings. Yes, I had a certain recollection that McMurtry said he was going to use the papers I took to Dunbar to take land with. I don't think he had to tell me what kind of land, because I knew he was in the oil business. That is what he would be taking up. He said he intended taking up lands in Kern and Coalinga—what you call the Midway District, for the Oriental Oil Company with the papers I took to Dunbar. Yes, my understanding was that the Oriental Oil Company was to get all the benefit

(Deposition of L. A. Shadburne.)

from the execution and use of those papers. No, I don't think the company did, because I didn't get any. No, I have never at any time located any lands.

Cross-examination.

No, I have no recollection of any conversation with McMurtry in which he mentioned the county, township or range where these lands were to be located. [110—3]

**Deposition of Charles A. Dunbar, for Plaintiff.**

CHARLES A. DUNBAR, called by plaintiff April 5, 1917, testified by deposition as follows:

Reside in Chicago, and am one of the firm of Walters & Dunbar, livestock commission merchants; was in the same business in 1903, employed by the Bowles Livestock Commission Company. Was introduced to L. B. McMurtry in Chicago 13 or 14 years ago, by Len Chadburn. Had two or three deals with McMurtry in regard to some stock in the Oriental Oil Company which Chadburn was promoting. I didn't buy any stock, but secured some. McMurtry borrowed $500 from me. At the time, I didn't know that the Oriental Oil Company was broke, and he gave me 10,000 shares. Don't know whether it was as a bonus or security. He said, "If this company goes right it will make you rich." The attempt to sell me the oil stock covered a period of probably six months, possibly a year, and I assisted him in making some sales on it. Yes, I am the C. A. Dunbar who signed that power

(Deposition of Charles A. Dunbar.)

of attorney (Plaintiff's Exhibit 9). Am a little hazy as to the circumstances. As I remember it, at that time, I was dealing with Mr. Chadburn to go to California to work for the Oriental Oil Company, and during our different conversations he said that there was some—that Mr. McMurtry wanted to get some signatures to a paper for some cause, and I have forgotten what it was; I knew about what it was for. He asked me if I could get him any signatures, and I told him yes, I could get him any amount of signatures to any paper he wanted. Mr. Chadburn came out to the stockyards, and he said it would be necessary for them to be signed before a notary public in the office where I worked. Mr. W. R. Love is a notary public, and I told Mr. Love that he probably could get a little extra money by getting those signatures to this paper and to catch those fellows as they came in the office, and get them to sign it. And I may possibly have sent some of them in and probably brought one or two of [111—4] them in; I don't just remember. Q. Do you remember whether you talked to any of those people about signing it? A. Yes, I think I did talk to some of them, asked them if they would sign a paper Mr. Love had in there, as a favor to me. Q. Did you make any explanation to them as to what the nature of the paper was, or what it was for? A. I don't think so. Q. Did any of them ask you what it was they were signing? A. No, not that I remember.

I signed it out of friendship for Chadburn and

(Deposition of Charles A. Dunbar.)

McMurtry. Didn't know it amounted to anything. Had no intention whatever of taking up any public lands for my own benefit or use. Don't recollect that McMurtry ever said anything to me about this paper. Chadburn said he wanted it for McMurtry to use for the Oriental Oil Company. Don't recall that he said how it was to be used. Didn't know my name was to be used in the location of oil lands, nor did I have any intention of claiming any lands that my name might be used to locate. Didn't know I was signing a location of that kind.

Q. Did Mr. Chadburn tell you it was for the Oriental Oil Company? A. I don't just remember, but he said he wanted those signatures for Mr. McMurtry; I liked McMurtry very much, thought a great deal of him. I was doing that as a personal favor to Mr. McMurtry. Q. Did you ever intend by signing this power of attorney to acquire a patent to any public oil lands in the United States? A. I didn't know that I had any. At that time I didn't know that I had any right whatever to oil lands of any kind.

No, no one explained to me what rights I would have if my name was used by McMurtry under this power of attorney. I didn't know what lands my name had been used to locate until they were described just this moment. Never knew where it had been used. I heard within the past six months that it had been used. After having this power of attorney signed and signing it myself, the next I heard of this [112—5] transaction was last sum-

(Deposition of Charles A. Dunbar.)

mer when a federal agent called on me. Haven't seen McMurtry since I loaned him this $500, and don't recall talking with Chadburn or any of the other signers about it. Remember most of those whose names appear on these powers of attorney (Plaintiff's Exhibits 8 and 9), as being around the stockyards. Mr. Love and I were instrumental in getting the signatures; I asked some of them to sign. Took them as they came in the office, wherever we thought a man would sign, we asked him. I didn't explain to any of them just what they were signing or what the rights would be under the laws of the United States. I couldn't make any explanation in that respect at all, because I didn't know myself. They signed as a favor to Love and myself more than any other reason. At that time around the stockyards it was very easy to get a man to sign his name to a paper of almost any description. There were papers of some kind circulated through that building every week, even to this day, asking for signatures. It was formerly our custom to sign them.

Cross-examination.

I am 42 years of age. In 1903 my salary was about $250 a month. Have been in my line of business for 23 years there in the stockyards. Have known Love about 20 years. Yes, I have been paid my $500, and still like McMurtry. Am still friendly with Chadburn, talked with him a few minutes yesterday. He told me he had forgotten about having signed the paper of that kind out there. Don't

(Deposition of Charles A. Dunbar.)

think he gave me any papers; think he gave them to Love. No, I haven't talked this over with Love; haven't seen him for six months. He was in Oregon the last I heard of him. Yes, Chadburn came to me at the stockyards and talked about getting signatures. Never talked with McMurtry about getting signatures. No, he didn't then owe me money. This $500 he borrowed after that. Don't think I talked with him [113—6] at the time he borrowed this $500 about having obtained the signatures. Didn't ask him what he had done with the powers of attorney, nor did he tell me. I couldn't say positively that I asked any of these men to sign that power of attorney. Don't remember any part of any conversation with any of them at the time. Yes, Love was a man of integrity and I wouldn't ask him to do anything wrong. Didn't think I was doing wrong. It was simply fulfilling his duty as a neighbor for anyone signing that paper, would acknowledge. Don't believe I read the paper; many a one I have signed without reading it. Didn't have that paper in my hands that I remember. Chadburn told me what he wanted, wanted some signatures on a paper, and I went with him, as I remember, to Mr. Love and told him Mr. Love might be able to get signatures on the paper. He probably told me what it was. I didn't read it, that I remember. Don't remember what he told me it was. Yes, he may have told me it was a power of attorney authorizing McMurtry to locate oil lands and mineral lands out west. But I don't remember

(Deposition of Charles A. Dunbar.)

his doing so. Wouldn't say he didn't. Yes, think he asked me how many signatures I could get, and I told him as many as he wanted. As I remember, Love had the paper, and said, "I would like to have your signature." Don't remember that any of them asked me its character. Don't remember whether anyone was present when I signed as the last one, and don't know what was done with the papers after they were signed. No, it is not true that I mailed them. It is absolutely untrue. I have no recollection of anything of the kind. As I remember, Chadburn came out there and got those papers himself, and paid Mr. Love his notary fees. Think I have a recollection of seeing Love deliver the papers to Chadburn. Am quite positive about that. [114—7]

**Deposition of Jesse I. Cunningham, for Plaintiff.**

JESSE I. CUNNINGHAM, called by plaintiff April 5, 1917, testified by deposition as follows:

I live at 7721 Lawrence Avenue, Chicago. Am clerk for the Illinois Central Railroad. In 1903 I lived in Chicago and was with the Bowles Livestock Commission Company, at the stockyards, and knew C. A. Dunbar. I am the person whose name appears on that paper (Plaintiff's Exhibit 8). Don't remember very much about it, talking to Mr. Love, the notary, at that time, and some bookkeeper of the Bowles Livestock Company, he kind of brought it to my mind. I remember the crowd of men that entered at this time. It happened in the

(Deposition of Jesse I. Cunningham.)

Bowles office. Who the party was I don't remember. I remember Mr. Love asking us in and having us sign this paper. Don't remember that it was then explained to us or who signed it. This was all told to me afterwards. Can't remember at all what it was for. If I signed it it must have been my intention to allow somebody to locate me on public lands. It must have been explained to me at that time. I don't know. No, I didn't then know McMurtry. Met him in San Francisco in November or December, 1916. Prior to meeting him I had not learned how many locations my name had been used in making. I have heard my name was used in locating 44 acres out there. Never spent any money in the development of oil or other minerals upon any lands covered by locations made in my name. Suppose my intention with respect to the public lands when I signed that power of attorney was speculation—taking a chance. I expected to get my share of it,—fifty-fifty, I think it was to be split, with the man that signed for it. Q. Was that Mr. McMurtry or Mr. Love? A. I guess Mr. McMurtry had Mr. Love have us sign it. Q. Did you expect to give a part of your interest to someone else? Mr. ACH.—I object to that as leading and suggestive. The WITNESS.—Well, we were supposed to go half and half, I think, was all they said. [115—8]

Mr. HALL.—And you were to go half and half with whom? A. We was to spend no money at all, wasn't to give us one cent, one penny at all, just

(Deposition of Jesse I. Cunningham.)

the right of signing our name was the way I understood it, that was the way it came to be signed. Q. You were to get half of it and someone else was to get the other half of that arrangement? A. I suppose the whole thing was divided up and fifty per cent of the money belonged to the people who signed and the others that leased the stuff were to get the other half. Yes. I was willing that this should be done. David G. Cunningham was my father, and he is now dead. I heard he signed this paper, but never saw his signature or talked to him about it, and cannot remember whether he was in the room when I signed. It is so far back and there were so many there I can't remember. He was a salesman at that time.

Q. The records of Kern County show that on January 1, 1907, there were located, in Kern County, California, the following placer mining locations on which yourself and seven others appear as locators, to wit: The Indiana Claim, embracing the northwest quarter of section 22; the Iowa claim, embracing the southeast quarter of the southwest quarter, the south half of the southeast quarter, and the northwest quarter of the southeast quarter of section 28; the Harrison Placer Mine location, embracing the northwest quarter of section 34; the Modoc Placer Mining Claim, embracing the northeast quarter of section 20; the Wilgus, embracing the northeast quarter of section 26; and the Georgia Placer Mining Claim, embracing the northeast quarter of section 32, all in township 31, range 23;

(Deposition of Jesse I. Cunningham.)

also the Maine Placer Mine, embracing the northeast quarter of section 9, and the Vermont Placer claim, embracing the northeast quarter of section 4, township 32, range 23; did you ever, at any time, possess any of the lands which I have just described? A. No, sir. No, since January 1, 1907, I never did any act toward the development of oil [116—9] or other minerals upon those lands, nor have I ever expended any money for that purpose, or attempted to convey those lands by deed, lease or otherwise, or do anything with respect to them after January 1, 1907. Prior to going to San Francisco, in 1916, I never had been advised by McMurtry of anyone as to what disposition had been made of those mining locations, nor have I ever received any money from the proceeds of oil or from the sale or leasing of those lands. Before going to San Francisco in 1916 I never communicated with McMurtry or anyone with respect to any right I might have had in those lands. After signing that power of attorney, the next I heard about the transaction was during the summer of 1916, when Mr. Favorite, an official of the Government, interviewed me at my home. I then told him what I knew about it. No, I never learned that these lands were relocated January 1, 1909, by McMurtry, as attorney in fact, for other parties, and I never gave my consent to the surrender of those mining claims, nor did I, other than by this power of attorney I signed December 21, 1908, authorize McMurtry to make a deed, dated April 14, 1908, conveying part of these lands to H.

(Deposition of Jesse I. Cunningham.)

C. Stratton, or to enter into a contract, dated October 8, 1908, with J. M. McLeod, affecting part of these lands. Prior to going to San Francisco I hadn't learned that McMurtry, as my attorney in fact, had allowed those mining locations to lapse and become of no effect, nor did I ever authorize McMurtry to cover the lands covered by locations on which my name appeared with the so-called New York locators on January 1, 1909.

Cross-examination.

When Mr. Favorite came to my house last summer he stated his mission and asked me if I had any interest in lands in California. I told him no. He then asked me if I ever sent anybody there to draw lands for me or give anybody a power of attorney, and I said no. [117—10] He then wrote up some kind of an agreement to that effect and read it to me and I signed it. I believe he said he was a notary. No, he didn't show me any papers or tell me that the records showed that the names of Jesse I. Cunningham and David G. Cunningham had been used by McMurtry to make locations of lands out there, or what other names had been used. That is the paper I signed (Defendants' Exhibit 6). Defendants' exhibit offered and read into this deposition and is as follows:

**Defendant's Exhibit No. 6.**

"Jesse I. Cunningham, of 7721 St. Lawrence Avenue, Chicago, Illinois, being sworn says:

"In 1903 I was living in Chicago and was work-

(Deposition of Jesse I. Cunningham.)

ing for the Bowles Livestock Commission Co., at the stockyards in Chicago. My father's name was David G. Cunningham. He is now deceased.

"I do not have any recollection of anyone ever having talked with me about filing on land or making location of land in California, and have no recollection of ever having given anyone a power of attorney to locate or file on land for me. I do not know L. B. McMurtry. I did not know that my name had been used as a locator on claims in California, until informed of that fact by Special Agent Favorite. If I ever signed a power of attorney for anyone empowering him to make locations of Government land for me, I signed the name without knowing and understanding the contents of the paper. And if any locations were made in my name they were made without my knowledge and without any authority from me.

"J. I. CUNNINGHAM.

"Subscribed and sworn to before me this 9th day of August, 1916, at 7721 St. Lawrence Ave., Chicago, Ill.

"J. H. FAVORITE,
"Special Agent."

Yes, during the twenty days I was in San Francisco, I met some of these Chicago people, among whom were Morningstar, Rentschler, the two Dennisons, Bacon, Lee and Newhof. I talked with them and found that they, too, had been locators in land in California, through McMurtry. Some of them said they had signed powers of attorney. No, I

(Deposition of Jesse I. Cunningham.)

didn't tell them I did not; I told them I didn't remember signing it. They tried to refresh my memory, and brought it out to me. I then recalled certain circumstances—they brought it back to me in a faint way. After I returned to Chicago I went over to [118—11] *to* the yards one day, where I used to work at the time this signing happened, and I was talking to Mr. Love, the notary public before whom we signed; I told him that, and we talked in a general way about it, and then he brought it back to my mind. He says, "Don't you remember the time you came in and we walked over to that corner?" and I remembered, because the office is changed from what it used to be. He said, "We had that board that we let down." And I had a faint recollection of the crowd being there. Yes, I now remember signing some paper at the time mentioned. No, at the time I signed Love didn't say anything to us. C. A. Dunbar was present then, and four or five of us who were working with the Bowles Livestock Company. Don't recall who they were, or whether Dunbar signed. He was a salesman for the firm I was working for. Don't remember who spoke to me about signing, or a single word then spoken. Don't know what was in the paper I signed or who the other signers were. I remember there was a crowd there. I have heard so many things afterwards that I can't say I remember it myself. Yes, I testified on the stand at San Francisco that I didn't remember signing that paper, and that if I did sign such a paper I had no inten-

(Deposition of Jesse I. Cunningham.)

tion of taking up oil lands in California or elsewhere under the public land laws of the United States or claim any interest in such lands. No, I didn't then remember about this fifty per cent interest in any land. Q. Who told you that? A. I had a faint recollection of it before I testified the second time; I wasn't so sure about it. * * * Q. Who told you anything about fifty-fifty? A. It was not fifty-fifty, exactly. If these lands ever came to anything he would split, that is the way it was. Q. Who said that? A. McMurtry. * * * Q. How do you know he did? A. That is what I was told. Don't remember who told me. I just remember the facts in connection with the conversation. Don't remember just exactly who, told me when I signed the [119—12] paper. I have got a faint recollection of the details at that time.

Q. Where did you get that from? A. It was just kind of brought back to my mind. Q. Who brought it back? A. When Mr. McMurtry was talking about this, signing it, two or three months ago. I remember somebody said, "It won't cost you nothing; go ahead and sign it." That is the only thing I remember distinctly, yes.

Q. Listen, Mr. Cunningham, now. Nobody ever proposed to you that you should lend them your name so that they could go out and get more land from the Government than they were entitled to and commit a fraud upon the Government, would you be a party to doing it? A. No, sir. Nobody said that to me. Q. Nobody ever came to you and said,

(Deposition of Jesse I. Cunningham.)

"Here, let us have your name, somebody wants to get some land from the Government, more than the law entitles them to," would you do it? A. No, sir. Q. Did you ever intend that your name should be used so that anybody else could go in and get land from the Government for themselves? A. Not unless I was equal with them, got something out of it, too. Q. The truth of the matter is that you now remember that matter in about this way, isn't it, that in the hurry and flurry of your business somebody came along and said, "Here is a chance to make some money land-locating out in California; sign a power of attorney, and if anything comes out of it you may get some money out of it," isn't that about the idea? A. Yes, sir. Q. There wasn't any more or less to it, was there? A. I can't remember; all that was said about that was that we was to get something out of it. [120—13]

**Testimony of William R. Love, for Defendants.**

WILLIAM R. LOVE, called on behalf of defendants, testified in open court as follows:

Reside at Walla Walla, Washington. In December, 1903, I was cashier for the Bolles Livestock Commission Company, at the stockyards, Chicago, Illinois, of which company I was subsequently a director and secretary. Was with this company until two years ago, beginning in 1899, then I resigned because of ill health. While there was notary public for Cook County, Illinois. Never met L. B.

(Testimony of William R. Love.)

McMurtry or receive any letter or telegram from him, or message of any character from any source. Did not keep any record of my notarial work. Don't think the law requires it. Knew C. A. Dunbar there at the stockyards. Had known him about three years prior to December 21, 1903. Had no personal acquaintance with man by name of Shadburne. Never had original powers of attorney (Plaintiff's Exhibits 8 and 9) in my personal possession. Yes, they were given to me for my signature as notary. I was at that time keeping books and acting as cashier. One afternoon this man you call Shadburne and Mr. Dunbar were out in the outer office talking to a number of our employees and some outsidemen about the matter in question. That was the first I knew of it. I don't recollect stopping my work behind the desk and going out among them, but I do recollect that the sum and substance of it all was a request for powers of attorney to file on land. The boys laughed and joked about it a good deal. Both Mr. Shadburne and Mr. Dunbar were standing up talking to the boys as they sat along the side of the office. When it came to signing the documents these men filed by my desk and signed it in front of me on the counter-projection of the desk outside of the railing. The next morning Mr. Shadburne was back at the yards. I remember him as being out in the hall. I recall Mr. Dunbar coming into the [121—14] office about noon and he and Mr. Shadburne stepping up to the end of my desk where I attached my notarial seal and signature. Mr. Shadburne then

(Testimony of William R. Love.)

offered me or tendered me $15 for my services. I remonstrated and said it was too much, that I had never assessed anybody a notarial fee of that size, but he in turn said that it was right and insisted upon my taking it. He and Mr. Dunbar left the desk with the papers. Those things I remember very distinctly. Yes, I took the acknowledgment of all these persons whose names appear upon these powers of attorney on which my name appears. Don't recall hearing Shadburne or Dunbar say anything on the subject of whether the locations, if made, would ever prove or as to whether they might prove valuable. But I had the impression that this land, if it be proved valuable, would be a good thing for the boys who were signing the powers of attorney. I recall the remark of someone in a jocular way about Mr. Newhoff, that it would be a joke if Sammy had to go and sit on a sandhill for a couple of months to prove up his claim. I recollect a man by the name of Hokan Role, but don't recall meeting him at that time. But he must have signed the paper or I wouldn't have acknowledged it. This applies to J. A. Bacon also. I knew all the people whose names appear on these powers of attorney, more or less. Some of them, of course, better than others. But I do know this—that never in my life have I attached my notarial seal and my signature to any document the signatures upon which I did not actually witness. Don't recall reading the powers of attorney as I was very busy at the time. Don't recall any specific statements made by anyone at that time con-

(Testimony of William R. Love.)

cerning this matter, but the general impression was that if this land was valuable—proved to be valuable—the boys would have the right to sell it—and I don't know whether it was thought that any particular person [122—15] would buy it or not.

Cross-examination.

One of these men who signed one of these powers of attorney was named Pierce, not Price—his name was R. E. Pierce, not R. E. Price. I knew a Converse there, who is now dead. I don't recall his initials. There was A. J. Rowley there. Also W. J. Nichols, not Michals. I never went into the details concerning the signing of these powers of attorney. However, I did have, as I said, the impression that it was filed on land that might be valuable, and the boys couldn't lose, and they might make something. That was the general impression. I don't think they thought they would make a whole lot. Q. Did the boys have the idea there in the conversation that you overheard that they would have to drill oil wells? A. My recollection is that it was spoken of as mineral lands. Q. Well, did you get the impression that it was gold lands they were dealing with or— A. My impression was that it was a mineral land proposition. Q. And you don't remember anything having been said about oil wells or— A. I don't remember anything said about oil lands. Q. Did you hear anyone attempt to detail to the men who signed these instruments what their rights were under the mineral laws of the United States? A. No, because that talk was all outside while I was

(Testimony of William R. Love.)

back of the desk working. Think McMurtry's name was mentioned. I recall that Mr. Dunbar knew Mr. McMurtry, and that is the connection in which Mr. McMurtry's name comes to me. Don't recall anything being said about McMurtry being an expert in the oil business or a man who was likely to make money out of this transaction. Don't recall having talked with any of these men as to their idea of their rights in the transaction or the extent of their interest in any location that might be made under this power of attorney. [123—16] Nor do I recall hearing any of them say anything about advancing money for the development of any property that might be located. Q. As I understand it, on the contrary, you heard them say that it would not cost them anything and they would not be liable for anything; is that correct? A. I don't recall that. I recall the thought that they might have to go and sit on it for a couple of months to get it. Yes, that came about in jesting over Newhoff. Yes, the boys treated it in a rather jesting sort of way. I think the boys felt, however, that if the land later proved to be valuable they might have to pay some tax fees or some little things like that. Don't recall hearing any of them say anything definitely about selling his interest; but that seems, as I recall it, to have been the impression, that they might sell it later on. It seems to me that the information was that they could take 20 acres each. Didn't hear anything said about an association entry. As I recall it, there were two or three of these instruments.

(Testimony of William R. Love.)

Redirect Examination.

The only Lee I knew was Tom Lee. Don't recall that his middle initial was H. I don't recall having asked any of these men to sign this power of attorney.

It may be that I introduced Shadburne to Nettles, but I didn't know enough about the proposition to elaborate upon it for anybody to sign it. I may have introduced Mr. Shadburne, however, to some of the boys that following morning while waiting for Mr. Dunbar. [124—17]

**Testimony of Charles W. Nettles, for Plaintiff.**

CHARLES W. NETTLES, called by plaintiff, testified February 18, 1919, in open court as follows:

Am a bookkeeper and land salesman for Fresno Farm Land Company and reside at Kerman, California. Lived in Chicago in 1902 and was bookkeeper for Charles E. Harding Company, which was engaged in the livestock business about twelve years. Knew Charles A. Dunbar and W. R. Love in 1903.

I am the C. W. Nettles whose name appears on that power of attorney (Plaintiff's Exhibit 8). Signed it in the Exchange Building. It was presented to me by Mr. Love. The only thing he said was that this gentleman was to represent different parties in locating this land. Yes, I mean McMurtry, if that is the party. Had never known McMurtry, and I had never before made any location on public lands, either mineral or nonmineral, and was not familiar with the public land laws. Don't remember the details of what Mr. Love said. Noth-

(Testimony of Charles W. Nettles.)

ing was said about how many claims would be located. I didn't then know the number of acres contained in an association claim. I presume I knew at that time the interest each person would have in an association placer mining claim, but don't remember at this time. Nothing was said by Mr. Love to me as to how this matter would be handled, or by whom, and I had no information as to who would handle this transaction. Presume there was some statement made at that time as to what my interest would be in any claim that might be located under the power of attorney, but I have forgotten what it was. I do not know and did not at that time have any knowledge as to what I might receive out of any claims that would be located under this power of attorney. Don't remember that anything was said by Mr. Love as to what I might receive. Had no intention of expending any money in the development of oil lands and never was asked to expend any money in the development of any [125—18] oil lands that were located in which my name appeared as locator.

Q. The records of Kern County disclose that your name appears with the names of seven others as locators of the following lands: The northwest quarter of section 34, the northwest quarter of section 20, the northwest quarter of 22, the northwest quarter of 26, and the northwest quarter of 32, in township 31, range 23, in Kern County, California. When, if at all, was the first time that you learned that your name appeared as the locator upon those

(Testimony of Charles W. Nettles.)

quarter sections which I have named? A. Practically to-day.

After I signed the power of attorney I never made any inquiry as to what had been done under it and never received any money or thing of value by reason of the fact that I executed it or by reason of the fact that my name appeared upon the location notices upon these several quarter sections of land. Never was requested to consent to any transfer or any leases of any of these lands and was never advised by anyone that there had been transfers of leases of lands upon which my name appeared as locator. I presume that at the time I signed this power of attorney something was said by Mr. Love as to what I might get out of the transactions growing out of such signing but I don't remember what it was. I signed it because it was expected, I presume, that we would get something out of it, naturally; I didn't know what I expected to get; presumably that was in the hands of Mr. Dunbar and Mr. Love; I had no idea as to what proportion of the proceeds I might get and don't remember who was to determine that.

Cross-examination.

Q. When you signed that power, Mr. Nettles, did you sign it in good faith and with honest intent?

A. I certainly believe so, yes, sir. [126—19]

Q. Did anybody at any time ask you before signing that power of attorney, or at the time of signing the power of attorney, to lend your name so that any other persons could avail themselves of any rights for

(Deposition of Simon Newhof.)

their benefit under the mining laws of the United States? A. No, sir. [127—20]

**Deposition of Simon Newhof, for Plaintiff.**

SIMON NEWHOF, called by plaintiff April 5, 1917, testified by deposition as follows:

Reside at 4015 Calumet Avenue, Chicago, Illinois. Am purchasing agent at the Union Stockyards. In December, 1903, was in the ordering and buying business at the stockyards for myself. I signed my name to a document and that must be the one (Plaintiff's Exhibit 8). The only memory I have of the deal is, Mr. Dunbar is the one that got me to sign it. I don't recall if Mr. Love was there. Mr. Dunbar did not explain to me what I was signing. He explained it in this way, he explained to me—he called me in, as I remember, my brother I think was here at the time, and asked me if I would sign my name to a document. He said it was for a party that wanted to file on lands. He says, "It is not worth much now, but it might be worth something some day. It will not cost you anything." I refused to, but he worked on me and I finally signed my name to the document. I didn't read the document. Had I seen what I read over when in California I would not have signed it. The first time I read it was when I was in San Francisco. I signed that paper in Mr. Bowles office, where Mr. Dunbar and Mr. Love worked. Heard nothing more about it until Mr. Favorite interviewed me before I went to San Francisco. Before that I

(Deposition of Simon Newhof.)

knew nothing about the location of land in California in my name, and didn't know about my name appearing to any document until I was so informed by Favorite. Never paid a cent to do anything toward developing oil or other mineral upon any of these lands. At the time I signed the paper the proposition was pur to me in this way. I refused to sign it at first, and Mr. Dunbar was coming after me and wanted me to sign it. I said, "Well, I will sign it for you." He said, "You ain't losing anything, it is not costing you anything.; it ain't worth nothing now; it may be worth something some day." I done it more for personal acquaintance than anything else, personal [128—21] acquaintance with Dunbar, and as a matter of speculation. Nobody broached the subject of my putting up any money, or said anything as to what rights I would have in each claim that might be located. No, I didn't then know that I would be entitled to 20 acres out of each claim on which my name appeared. The only thing I knew about it was Mr. Dunbar explained, to me, said, "Put your name down here, and it may be valuable to you some day," and that is the only way I came to put my name down there. There was nothing said at all in regard to anything. Didn't know McMurtry then; first met him in San Francisco. No, I never consented that McMurtry might surrender whatever benefits flowed to me by reason of that power of attorney and relocating those lands in the name of

(Deposition of Simon Newhof.)

other people, and didn't know that it had been done until I learned of it in San Francisco.

Cross-examination.

No, nobody ever advised me to go out there and apply for a patent, and I didn't consider that I would or not. If I was a friend of yours and you had a document and asked be to sign it and I balked on it, and you had come up to me and would say, "It will not cost you anything," and you being an acquaintance, if a person would go ahead and ask those questions and get around me to sign it, naturally I would put my name down there. I put my name down as a speculation. Yes, it was for speculation, and for a matter of friendship also. [129—22]

**Deposition of Harry B. Rentschler, for Plaintiff.**

HARRY B. RENTSCHLER, called by plaintiff April 5, 1917, testified by deposition as follows:

Have resided at 4329 South 23d Street, Omaha, Nebraska, since 1916. Prior to that time I resided in Chicago for 25 years. In 1903 I was selling cattle for the Bowles Livestock Commission Company, and knew C. A. Dunbar a long time before that; also knew W. R. Love. It is my understanding that I signed that power of attorney (Plaintiff's Exhibit 8). Remember I signed a paper in the office there, don't remember the date. Dunbar brought in this gentleman and introduced him, and through him I signed it. I have since heard it was McMurtry. Am not sure. Never met the man

(Deposition of Harry B. Rentschler.)

before or since. I hope to get something out of it some time. That was the conversation. My recollection is it was Dunbar who told me this but am not sure. The conversation was—I objected to signing this paper at that time. I remember of making the remark, "What do I want to sign a paper like that for?" and he says, "Why, it will not cost you anything, and you might get something out of it some time." That is the way I remember it. Have no recollection of his telling me how I would get anything out of it or from whom. Never was asked for a cent, nor did I spend a cent. I never intended to. Have never asserted any right of ownership to the lands located under this power of attorney as described and never intended to secure a patent from the United States for them. Haven't given it a thought that I know of since the time those papers were signed—in fact, it slipped my mind. For a while, after it came up, I couldn't remember anything about it until I got to thinking over it. No mention was made to me about this until possibly two weeks before a Government official called on me, early last fall. There was quite a little kidding each other around the yards about it. I then thought it a joke. I never had any conversation or communication [130—23] with McMurtry about selling or disposing of those lands.

Cross-examination.

Yes, it is true that at the time I signed that paper something was said about its being given for the

(Deposition of Harry B. Rentschler.)

purpose of filing on Government land for a prospective deal, with the hope that it would become valuable some day. I read the paper and thought I knew what I was doing. My recollection is that I knew locations were going to be made for the purpose of trying to find some oil lands. Don't remember of any talk as to paying for the lands, and I understood that it didn't cost me anything. Q. There was no such talk as that? A. I don't remember any. Q. Did you enter into any arrangement at that time with Love or Dunbar, or the other man that was there, whoever he was, that they could use your name for the purpose of taking up lands for themselves? A. No, it was this here gentleman that was with Dunbar, that Dunbar brought into our office— Q. I want to know from you whether you agreed with anybody that they should use your name to get more land from the Government than they themselves were entitled to? A. I did, when I signed this paper, the way I remember it, because they would be locating lands in my name, that is my understanding. Q. It was for your benefit? A. I understood I would benefit from it. No, I never intended to give anybody a chance to defraud the Government. [131—24]

**Deposition of Franklin H. Denison, for Plaintiff.**

FRANKLIN H. DENISON, called by plaintiff April 5, 1917, testified by deposition as follows:

Reside at 6229 Ellis Avenue, Chicago. Am cashier for the Globe Rendering Company. Have

(Deposition of Franklin H. Denison.)

lived in Chicago more or less since 1871, and was there during December, 1903, in the same employment as now, in the Exchange Building, Union Stockyards. Knew C. A. Dunbar, who was a livestock cattle salesman for the Bowles Livestock Commission Company, and W. R. Love, who was secretary and bookkeeper for the same company. Presume I am the F. H. Denison whose name appears on that power of attorney (Plaintiff's Exhibit 8). I remember very vaguely executing such a document. As near as I can determine—this is a long while ago. I was an acquaintance of Charley Dunbar, and at his suggestion and the suggestion of Mr. Love I signed those papers. I presume I read it. Don't think I ever put my name to a paper without glancing over it. Can't remember exactly what was in those papers at the time. My impression now is that I was informed that this man wanted to locate lands out there, that they might become valuable at some time, and if they ever amounted to anything we would get our share. There was no explanation as to what my share would be or how many claims would be located in my name. Can't tell you who the man was who was to make the locations for me. Yes, I assume it was L. B. McMurtry, but am not positive. No, at that time I had no intention of spending any money in development or discovery of oil or other mineral on any lands that might be located in my name or to secure a patent from the United States. Think it was represented to us that there would

(Deposition of Franklin H. Denison.)

be no expense to us or the signers. If there was any expense of that kind Mr. McMurtry or whoever this man was would pay it himself. Am positive it was represented to us that we would be under no obligation. No explanation was made to me as to what my rights would be [132—25] under each location, and I didn't then know. Don't think I ever heard of the transaction until the officials of the Government were looking for some of the parties who gave their power of attorney to this man. I had forgotten about it. This official didn't see me in Chicago and I didn't see any Government officer about it until I arrived in San Francisco on subpoena in November, 1916, at which time I first learned that my name had been used as a locator upon oil land by McMurtry. Have never claimed any interest in the lands located in my name, which have been described, or exercised any act of ownership over them. Never knew until this case came up that I had anything to claim. If there is anything there I want it. Never authorized McMurtry to surrender any right I might have had in those lands.

Cross-examination.

Q. You knew that you had signed a paper by which it was intended that some agent in California might locate some oil lands? A. At that time I didn't know there was any oil lands. I thought it was homestead rights, and have been of that mind since. No, in signing that paper I didn't intend to perpetrate a fraud for the benefit of any-

(Deposition of Franklin H. Denison.)

body. At the time it was represented to me and was my understanding that I would have no costs to pay; but if he had represented to me that there was something there by my putting up a little money I would have put it up.

Redirect Examination.

Never was advised that it was necessary for me to put up any money to develop those lands or that they were valuable oil lands prior to November, 1916, when I was in San Francisco. [133—26]

**Testimony of Bert S. Denison, for Plaintiff.**

BERT S. DENISON, called by the plaintiff December 7, 1916, testified in open court as follows:

Am 38 years of age, a bookkeeper, and reside at Freewater, Oregon. In December, 1903, was a bookkeeper for the Bowles Live Stock Commission of Chicago. Yes, I signed that power of attorney (Plaintiff's Exhibit 9), there in the office before Love, as a favor to Charlie Dunbar, who worked for the firm. He said this Mr. McMurtry wanted to locate some land, and he needed some people to give him a power of attorney, and asked me if I, amongst others, would be one of them, and I said I would. Nothing was said as to what my interest would be in any lands that might be located, and I had no understanding or knowledge as to that. Had no intention of claiming a one-eighth interest in any lands located in my name or expending any money for development, and have never claimed any such interest.

(Testimony of Bert S. Denison.)

Cross-examination.

May not have known all of those who signed this power of attorney, but knew most of them and they were of good repute. Nothing Dunbar said led me to doubt the good faith of the transaction. Did not know McMurtry was to locate oil lands in California under that power of attorney, but knew he was to locate lands—that was all that was said. No, I didn't think I was going to deceive anybody, but thought the transaction was just what it appeared to be. Didn't intend to empower anyone else to take from the Government anything they or I might not be entitled to. Knew it might be used on Government lands anywhere. No, did not expect to forego any right that transaction might give me. Yes, if there was anything in the transaction that was lawfully mine I expected to have it. Yes, Dunbar represented that something might come out of it. He said, "Some day it may amount to something." Expected that if it did I [134—27] would have the benefit. Supposed it was all right or Dunbar would not have asked me to sign. believe there were four or five in the office at the time, but can't say who. I believe Dunbar brought in four or five men with him. Yes, it was all open and aboveboard.

Redirect Examination.

Heard nothing about this power of attorney until about three months ago Mr. Love wrote me that the Government was looking it up and that I might try to refresh my memory. Don't know McMurtry

(Testimony of Bert S. Denison.)

and have never since talked with Dunbar or any other of my associates about it. Have never claimed any interest in the Missouri claim located January 1, 1909.

Recross-examination.

No, never heard of the Missouri claim. Yes, if it had in fact been located lawfully under this power of attorney I would have expected to get the benefit of it in accordance with my original understanding, [135—28]

**Deposition of Guy A. Morningstar, for Plaintiff.**

GUY A. MORNINGSTAR, called by plaintiff April 6, 1917, testified by deposition as follows:

Reside in Chicago, and am employed by Cochran & Hanniberry, at the Union Stockyards. In December, 1903, was doing yard work for the Bowles Livestock Commission Company. W. R. Love was their bookkeeper, and I knew him. Have a faint recollection of signing that paper (Plaintiff's Exhibit 8). No, I had no intention of spending any money in the development of oil lands or gold mining lands, and didn't figure on getting any reward for signing that power of attorney. Didn't hear any more about this until Mr. Favorite called on me about six weeks ago. Never claimed any interest in the lands described, which my name was used to locate.

Cross-examination.

Don't pretend to remember all that was said when I signed. All I remember is just what I said there, might realize something out of it some day.

(Deposition of Guy A. Morningstar.)

Yes, I formerly testified: "It seems as though Dunbar—well, at that time Dunbar was working with the same concern, and he was looking for some of them to sign some papers, and they brought them in the office there, and an argument came up in regard to why we should sign them; and somebody said, "Well, it won't cost anything to sign them, go ahead.' And I sit down and give my name." And that the only purpose I had in signing was "nothing more than I supposed if anything came out of it I would expect my divvy out of it." I have testified to about the same thing here, only in different words. Yes, the supposition is that I read that paper, but there is nothing positive about it. Most of the boys working for the concern were there when I signed, and apparently all signed at the same time. No, I didn't intend to lend my name to defraud anybody. Evidently I gave McMurtry a power of attorney. At the time I gave it I didn't intend to spend any money, but any sane man [136—29] would be willing to spend some money, a few dollars, if he was going to get rich out of it. I never had any communication with McMurtry to my knowledge since the conversation that I might have had in the office, if I signed that power of attorney. [137—30]

**Deposition of Bernard M. O'Neill, for Plaintiff.**

BERNARD M. O'NEILL, called by plaintiff April 6, 1917, testified by deposition as follows:

Reside at 419 East 45th Street, Chicago. In De-

(Deposition of Bernard M. O'Neill.)

cember, 1903, was employed with the Union Stockyards & Transfer Company in the Exchange Building. Was acquainted with C. A. Dunbar and W. R. Love. Have a faint recollection of Love asking me to sign a paper of some kind as a matter of form. That is the way it was put to me. Could not say there was any explanation as to its purport or effect, or that anything was said about the locating of mining or oil lands. Signed it as a matter of friendship for Love. Don't think I knew L. B. McMurtry. The first direct information I ever had as to those lands located in my name is now, that the description of the lands has been read. Q. At the time you signed the paper for Mr. Love in 1903 what was your intention with respect to making locations upon public domains of the United States under the placer mining laws of the United States? A. Well, I take it, of course, this is just—that it was probably a matter of accommodating Love. If I would have any material interest in it I would read it. I don't recall that. It must have been a case of accommodation. No, I did not then have any intention of expending any money in the development of oil or other minerals upon the lands which would be located by the use of my name, nor have I ever claimed any interest in any of those locations named

Cross-examination.

No, I don't pretend to recall all that Love said when I signed that power of attorney, and wouldn't say I didn't read it. Yes, I usually read papers

(Deposition of John L. Bacon.)

before signing. It is likely Love explained that paper, but I don't remember it. [138—31]

**Deposition of John L. Bacon, for Plaintiff.**

JOHN L. BACON, called by plaintiff April 5, 1917, testified by deposition as follows:

Reside at 986 West 87th Street, Chicago. Am clerk for the Chicago, Burlington & Quincy Railway and was in December, 1903. Have no recollection of signing that power of attorney (Plaintiff's Exhibit 8). I know Mr. Love, the notary public; at that time he was employed with the Bowles Livestock Commission Company. Also knew Dunbar, who was with the same firm. Have no recollection of talking with Dunbar in December, 1903, about signing any such paper or appearing before Love. The first I was apprised that the name appeared on such instrument was when Mr. Favorite called on me last summer. Afterwards I went to San Francisco as a witness. Have been employed in the Burlington offices since 1896, and never knew of any other J. L. Bacon out there or in the Exchange Building. Mr. Love has tried to recall this matter to me but I couldn't bring anything to my mind that refreshed it.

Cross-examination.

My place of business in 1903 was in the Exchange Building, Union Stockyards. I had at least a speaking acquaintance with Mr. Love and knew he was a notary public. As I recall it I signed his requisition to act as notary; and never heard his

(Deposition of John L. Bacon.)

official integrity questioned. Am 42 years of age. Knew some of the men around the building and yards there at that time, especially Hokan Roll. Was with him a good deal during the day and evening. He came in at the time Favorite was interviewing me, about August last year. His name was also on the list Favorite showed me. Heard some of these men discussing the matter of signing a power of attorney but didn't take particular interest in such conversation. Never talked with Dunbar about this that I recollect. Yes, it is possible that I signed the paper and forgot it. Am positive I never lent my name to anybody for the purpose of aiding or assisting them in their own names or for their own benefit to acquire any land from the Government. [139—32]

**Deposition of Frank B. Blackman, for Plaintiff.**

FRANK B. BLACKMAN, called by plaintiff April 9, 1917, testified by deposition as follows:

Reside at 46 Semicir Street, Pittsburg, Pa., and am a livestock man. In December, 1903, was with the Bowles Livestock Commission Company, Exchange Building, Union Stockyards, Chicago, and was then acquainted with C. A. Dunbar, W. R. Love. Was head yardman and practically over both of them. Have no recollection of executing that power of attorney (Plaintiff's Exhibit 9) or of any transaction or business of that kind. If I signed anything of the sort it might have been put to me in some other light, and through my confidence in Love might have signed it, but have no

(Deposition of Frank B. Blackman.)

recollection of having any interest in anything of that kind. Was in the office with Love and know of no other Blackman around me. [140—33]

**Deposition of Hokan Roll, for Plaintiff.**

HOKAN ROLL, called by plaintiff April 4, 1917, testified by deposition as follows:

I reside in Chicago. Am in the livestock commission business. Resided in Chicago in December, 1903, and was then employed by the Chicago, Burlington & Quincy Railroad, in the Exchange Building, Union Stockyards. Have no recollection of signing that power of attorney (Plaintiff's Exhibit 8). First learned that the name appeared upon such a paper when Mr. Favorite called on me last summer. Can't say whether I knew C. A. Dunbar at that time and have no recollection of talking with him about executing such an instrument. Apparently L. B. McMurtry was my agent and attorney in fact to locate oil lands, but I never claimed any interest in any such lands or intended to acquire any, or apply for a United States patent for the lands described as having been located in such name.

Cross-examination.

Am in the same building now that I was in in December, 1903. Didn't know that Mr. Love had an office in that building—that I remember. Yes, I know him. If he says he saw me sign that paper and took my acknowledgment to it I would say I say I think he was mistaken, that I don't believe I

(Deposition of Hokan Roll.)

signed it. I am as positive about this as a man can be about anything. Am forty-one years of age. Can't say that I have talked with Love about this. It was brought to my attention by there being so many at the yards who were reported to have signed it and we naturally talked about it to a certain extent, not a great deal. I didn't take any particular interest in it for a long while because I didn't interest myself particularly. I felt confident in my own mind, it was a fraud, so far as I was concerned, that I had no recollection of it, having given anyone a power of attorney to act for me, to file lands for me. I was positive that I had not, didn't interest me further than that I knew it [141—34] was a skin so far as I was concerned, or felt confident it was such; and didn't give it much attention. At that time I didn't know Mr. Love or Dunbar was connected with it. Yes, I believe still it is a fraud; I don't believe I signed it. Mr. Favorite was the first to call my attention to this matter. He mentioned several names, parties who was supposed to have gone in, and I knew some of them. Yes, I knew C. A. Dunbar in connection with the Exchange Building, but am not sure that I knew him in 1903. Presume that I did. Have no recollection of his talking to me about these matters. Yes, have talked to him about this. [142—35]

**Deposition of Harry Hagenbuck, for Plaintiff.**

HARRY HAGENBUCK, called by plaintiff April 4, 1917, testified by deposition as follows:

I reside at 9647 South Seeley Avenue, Chicago; have lived in Chicago about 23 years. Am in the anti-hog cholera serum business. In December, 1903, was manager for Darlington & Company, live-stock brokers, at 143 Exchange Building, Union Stockyards. Have known C. A. Dunbar ever since he was in the yards, and know W. R. Love. Can't recollect signing that power of attorney (Plaintiff's Exhibit 8), and have no recollection of talking with Dunbar, Love or other persons with respect to signing such a paper. I first learned that the name appeared on such an instrument when investigator Favorite called last fall. My memory has not been refreshed since and I can't recall signing it. Before Favorite called I didn't know that the name Harry Hagenbuck with others appeared as a locator on certain described mining claims in California made January 1, 1907, and had never heard of it.

Cross-examination.

Yes, I mean that I have no personal recollection of signing that paper. Wouldn't say that I didn't. [143—36]

**Deposition of James Norton, for Plaintiff.**

JAMES NORTON, called by plaintiff April 6, 1917, testified by deposition as follows:

Was born in Chicago in 1867 and have always

(Deposition of James Norton.)

lived there. Am a cattle handler, with the Western Packing Company, Union Stockyards. Was employed in the same place in December, 1903, with Felcher, Peterson & Hess, and knew W. R. Love and C. A. Dunbar, both employed by the Bowles Livestock Commission Company, where I went to get orders. Don't remember signing that document (Plaintiff's Exhibit 9) or having a talk with anyone about signing such a paper. Have talked about it since I was subpoenaed, but my memory has not been refreshed, and I have no recollection of ever authorizing anyone to take up claims in my name. I usually sign my name James E.

Cross-examination.

No, I didn't testify that I didn't sign that power of attorney, I can't remember, nor do I mean to testify that Mr. Love or Mr. Dunbar didn't ask me to or tell me what it was. I don't remember. [144—37]

**Deposition of Joseph Norton, for Plaintiff.**

JOSEPH NORTON, called by plaintiff April 6, 1917, testified by deposition as follows:

Reside at 5438 Carpenter Street, Chicago, Ill. Am engaged in hauling crippled cattle at the Union Stockyards. Was in the same business in December, 1903, and knew W. R. Love and C. A. Dunbar, who were with the Bowles Livestock Commission Company, into which office I went occasionally. Well, if the address is there on that paper (Plaintiff's Exhibit 9), it must be me. I can't remember,

(Deposition of Joseph Norton.)

can't swear that I did sign it or that I didn't. Don't remember either Mr. Love or Mr. Dunbar talking to me about signing such an instrument. Never talked to anyone about signing such an instrument. Don't know L. B. McMurtry, and never had any communication with anyone about this matter. Have never claimed any interest in the lands in California described as having been located in the name of Joseph Norton. I have six brothers working in the yards there, of whom James is one. [145—38]

**Deposition of Thomas H. Lee, for Plaintiff.**

THOMAS H. LEE, called by plaintiff April 6, 1917, testified by deposition as follows:

Reside at 811 West 55th Street, or Garfield Boulevard, Chicago. Was living there in December, 1903, and working for the Chicago, Burlington & Quincy Railroad Company, in the Exchange Building at the Union Stockyards. Don't remember signing that power of attorney (Plaintiff's Exhibit 8). Wasn't acquainted with Love, Dunbar or McMurtry. No, in December, 1903, I had no intention of filing upon public lands, and don't remember of ever learning that my name or the name of Thomas H. Lee was used in making locations on oil lands in California. I know another Thomas Lee, who was working in the Exchange Building. He was a commission man. [146—39]

**Deposition of William Joseph Husbands, for Plaintiff.**

WILLIAM JOSEPH HUSBANDS, called by plaintiff April 5, 1917, testified by deposition as follows:

Reside at 4800 Shields Avenue, Chicago. Am secretary and treasurer of the Coal Teamsters Union. In 1903 was living in Chicago. Was then driving a coal wagon and went to the Exchange Building in the stockyards. Don't remember going before W. R. Love, notary public, in the office of the Bowles Livestock Commission Company, in December, 1903, and executing a power of attorney or any other paper. Don't know W. R. Love, L. A. Chadburn, C. A. Dunbar or L. B. McMurtry, and never knew of executing any paper before a notary public relative to oil lands.

Cross-examination.

Was in the Union Stockyards during the summer of 1903, but not during that winter. I never was in the office of the Bowles Livestock Commission Company. [147—40]

**Deposition of Victor G. Cranston, for Plaintiff.**

VICTOR G. CRANSTON, called by plaintiff April 6, 1917, testified by deposition as follows:

Reside at 857 West Garfield Boulevard, Chicago, Illinois, and am manager of the Stockyards Clearing-house. In December, 1903, I was a bill distributer, distributed weigh tickets on orders, and

(Deposition of Victor G. Cranston.)

knew W. R. Love of the Bowles Livestock Commission Company, in which office I would visit possibly twice an hour. Also knew C. A. Dunbar at that time. No, I have no direct recollection of signing that power of attorney (Plaintiff's Exhibit 9). Have talked with Love and Dunbar and tried to recall it, but can't. Have been well acquainted in the stockyards for the last 27 years and never knew any other Victor G. Cranston there, or T. G. or F. G. Cranston. No, I never claimed any interest in the lands located in the name of V. G. Cranston in California as described, or had any intention concerning them.

Cross-examination.

Wouldn't swear I didn't sign that paper, but have forgotten it if I did. Never met McMurtry that I know of, or Shadburn and never heard the name McMurtry mentioned until Mr. Favorite interviewed me.

Mr. HALL.—Let the record show that it is stipulated that W. H. Mahoney is now dead; that the Government's best knowledge is that Jones, Converse, Nicholls [Nichals], and Johns are dead; and that every possible effort has been made to locate Gorman, Price (Pierce), Dalbers, Ryan, Crowley (Rowley), Sterling and Hunt (Plaintiff's Exhibits 8 and 9). [148—41]

**Deposition of Frank B. Chapman, for Plaintiff.**

FRANK B. CHAPMAN, called April 16, 1917, on behalf of plaintiff, testified by deposition as follows:

I reside at No. 650 Westfield Avenue, Elizabeth, New Jersey. Am and have been for the last five and one-half years salesman for the Bryant Electrical Company of Bridgeport, Connecticut. In December, 1907, resided in the City of New York, and was salesman for the Machado & Roller Company of 203 Broadway, New York, makers of electrical instruments. Met L. B. McMurtry at his office on Broadway in some oil building, the exact location of which I don't remember. Met him at the time I signed the paper. I am the one that signed that paper (Plaintiff's Exhibit 5), but I cannot recall all the contents; it was through the request of Mr. Freeman, whom I had known for a year or so previous to that time.

Do not recall that I talked to anyone else about it. He said that Mr. McMurtry was here from California, a big oil man, and was interested in locating some oil lands or something of that sort, and he had agreed to help him out as he was acquainted a great deal in New York City, and my being a friend of his, he [149—42] thought that possibly I would not hesitate to do it, and I told him I would not, if it would do him any good, and there was no financial obligation, and so I signed it. Was not then or now familiar with the public land laws with respect to locating and acquiring title to public

(Deposition of Frank B. Chapman.)

lands. Don't recall that any explanation was made to me at that time by any person as to what rights I had under the mining laws of the United States.

Q. What was your purpose in signing this paper?

A. As a favor to Mr. Freeman.

Q. Did you have any other purpose?

A. Absolutely none.

Q. At that time did you intend to permit the use of your name in the making of locations upon public oil lands under the mining laws of the United States, with an intention of developing the lands and complying with the public land laws, and securing a patent from the United States to such lands?

A. No, sir.

Q. At the time you executed this power of attorney, did you have any purpose of aiding anyone in securing any title to any public oil lands in the United States?

A. No, sir. Of course, this paper was signed, what anyone could do with the paper—of course, I signed the paper, and did it, of course, knowingly, and I was in my right mind probably, but as far as giving it any thought, as to what the consequences would be, I forgot it.

Q. Did you intend at that time to expend any of your own money, or means in the development of any oil lands? A. No, sir. [150—43]

Q. The record of Kern County, California, discloses that on January 1, 1909, acting under the power of attorney dated December 21, 1907, L. B. McMurtry, as attorney in fact for yourself and

(Deposition of Frank B. Chapman.)

seven others, located the following placer mining claims, under the general mining laws of the United States, to wit:

"Minnesota," embracing the northeast quarter of section 34;

"Massachusetts," embracing the southeast quarter of section 20;

"New Jersey," embracing the southeast quarter of section 22;

"Virginia," embracing the southeast quarter of section 26; in Township 31, south; range 23, east, in Kern County, California, and eighteen others.

When, if at all, did you first learn that you, Frank B. Chapman, had been made one of the co-locators in each of those placer mining locations that I have designated?

A. I do not recall; I do not recall any of these names.

Q. When, after you signed this power of attorney, in December, 1907, did you again hear from this transaction?

A. I don't know whether it was through a letter from Mr. Freeman, or whether I saw Mr. Freeman again or not; I do not recall.

Q. Do you remember of the signing of any other paper by you after you signed the power of attorney in 1903?

A. I think I signed two proxies, papers at different times.

(Photographic copies of two proxies are here

(Deposition of Frank B. Chapman.)

offered in evidence as Plaintiff's Exhibits 1 and 2, respectively.)

My name appearing on each of these exhibits looks like a copy of my signature. [151—44]

Q. Who presented those papers to you, if anyone, for executions? A. I cannot tell you that.

(Said Exhibit 1 reads as follows:)

**Government's Exhibit No. 1.**

I, the undersigned, do hereby acknowledge that that certain power of attorney of date the 18th day of December, 1907 and recorded in Book 10 of Powers of Attorney at page 21, Records of Kern County, State of California, by me together with seven others executed to L. B. McMurtry is and at all times since said date has been in full force and effect and has never been revoked or modified; and I do hereby ratify, approve and confirm those certain contracts of sale made for me and in my name by L. B. McMurtry as my said attorney in fact with W. F. Herrin et al. of date the 4th day of August, 1910, and all contracts, agreements, deeds and conveyances made by my said attorney for me and in my name of and concerning said contract of sale and sale, and also all other contracts and transactions and acts made or done under said power of attorney by the said L. B. McMurtry.

WITNESS my hand and seal this 26th day of August, 1910.

(Sgd.) FRANK B. CHAPMAN,
L. S.

Witness:

(Sgd.) RUDOLPH LORECK.

State of New York,
County of Greene,—ss.

On this 26th day of August, in the year one thousand nine hundred and ten, before me, Rudolph Loreck, a Notary Public, in and for said ——— County, residing therein, duly commissioned and sworn, personally appeared Frank B. Chapman, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that—he—executed the same.

RUDOLPH LORECK.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office in the ——— County of Greene, State of New York, the day and year in this Certificate first above written.

[L. S.] RUDOLPH LORECK,
Notrary Public in and for the ——— County of Greene, State of New York.

My commission expires March 31, 1912. [152—45]

(Said Exhibit Two is the same in form as said Exhibit One, but purports to have been signed by the witness Frank B. Chapman on September 13, 1910, and acknowledged on the same date in Luzerne County, Pennsylvania, before W. L. Parsons, Notary Public.)

Don't remember receiving any money at the time I executed either Exhibit No. One or Exhibit No. Two. The first money I received for having signed this power of attorney in December, 1907, was in

(Deposition of Frank B. Chapman.)

1914, from Mr. Searls. I am not sure of his initials being F. H. As I recall it I received a check from him and he cashed it.

Q. I invite your attention, Mr. Chapman, to a check dated September 11, 1911, payable to the order of Frank B. Chapman, for the sum of two hundred and fifty dollars, signed F. H. Searls; it is endorsed on the back as follows:

"Received from L. B. McMurtry, Two Hundred and fifty dollars, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 21st day of December, 1907,

"FRANK B. CHAPMAN.
"C. W. THORN.
"F. H. SEARLS."

Q. Is that your signature on the back of that check? A. Yes, sir.

Q. At the time that you received that check did you cash it yourself?

A. No, sir, I don't recall as I did.

Q. Will you please explain to us the circumstances under which that check was paid to you and what occurred at the time of its payment? [153—46]

I don't remember that check at all. I don't remember the two hundred and fifty dollars; I received five hundred dollars from him; I remember that.

Q. But that was another transaction, was it not?

A. That was in 1914.

(Deposition of Frank B. Chapman.)

Q. And did you receive any money whatever in 1911?

A. I do not recall that I ever received a cent but the five hundred dollars.

Don't remember having received two hundred and fifty dollars or any other sum by reason of having signed the endorsement on this check dated September 11, 1911. That looks like my signature on the back of that check of that date. Don't recall having any conference with Mr. Searls or Mr. Thorn about the date of that check.

Mr. HALL.—We desire to read in evidence the check, as follows, to wit:

"5th Ave. & 28th St.,

"No. 159

"New York, Sep. 11, 1911.

"SECOND NATIONAL BANK, A-63.

"Of the City of New York,

"Pay to the Order of Frank B. Chapman,

"Two Hundred and Fifty Dollars.

"$250.00/100.

"F. H. SEARLS."

Q. Did you ever receive any shares of stock in the Pacific Oil Company?

A. I received some shares of stock, but I would not say it was specifically the Pacific Oil Lands Company.

Mr. HALL.—Let the record show, Mr. Stenographer, [154—47] that, at my request, Mr. Barnn has promised the original stock book of the Pacific Oil Lands Company.

(Deposition of Frank B. Chapman.)

Q. I invite your attention, Mr. Chapman, to certificate No. 27 in the stock book of the Pacific Oil Lands Company, which purports, or certificates, rather, that Frank B. Chapman is the owner of 1000 shares of the capital stock of the Pacific Oil Lands Company; I further invite your attention to the transfer certificate on the back—is that your signature, Frank B. Chapman, to that certificate?

A. Yes, sir.

Q. When was it that this certificate No. 27 was delivered to you?

A. I do not recall; it was mailed to me. I cannot say positively from whom it was received.

Q. How long did you retain that certificate of stock?

A. Until Mr. Searls, I met him at the Knickerbocker Hotel and surrendered it when I received five hundred dollars, together with another stock. I don't recall what this other stock was but I think I had seventeen hundred and fifty shares altogether.

Q. To refresh your memory, I will ask you if that was not 750 shares of stock, if those were not shares of stocks in the Empire Oil & Development Company?

A. I cannot say as to the name; all I can recall is approximately—it seems to me like the Columbus Midway.

Q. What did you pay for this certificate No. 27, representing 1000 shares of stock in the Pacific Oil Lands Company?

(Deposition of Frank B. Chapman.)

A. My name on the power of attorney. I guess. [155—48]

I paid no cash for it. The first I learned that I was to receive those 1000 shares of stock was, as I recall, it was—Mr. Freeman called me up one day, and asked me to meet Mr. Murtry and two other gentlemen at the Knickerbocker Hotel, and it was during the conversation there at Mr. Murtry's room.

Q. Was this conference at the Knickerbocker Hotel with Mr. McMurtry and others before or after the date of this check for $250?

A. I cannot tell you that; I don't remember that; I cannot tell you; the dates would have to be approximate because I don't recall.

Q. Before you surrendered this certificate in the Pacific Oil Lands Company, had you received any other money? A. No, sir.

I never received any dividends from the stock in the Pacific Oil Lands Company. I don't recall ever having received a prospectus or circular from this company. I think I did, but I don't recall positively.

Q. I invite your attention to a check dated January 8th, 1914, numbered 1191, drawn on the Bank of California, National Association, San Farncisco, payable to the order of Frank B. Chapman, $20.00, and signed by the Pacific Oil Lands Company, F. E. Harrison, Secretary & Treasurer, and L. B. McMurtry, Vice-President; and it is endorsed on the back, F. B. Chapman. Is that your endorsement?

A. It looks like it.

Q. Will you examine that check and tell me

(Deposition of Frank B. Chapman.)

whether or not you ever received it?

A. I never saw—I don't recall of receiving it; I never got any money on it, that is certain.

Q. What do you say as to that signature, F. B. Chapman, there? [156—49] A. It looks real.

Mr. HALL.—We offer that check in evidence.

Q. When you surrendered this certificate No. 27 for 1000 shares in the Pacific Oil Lands Company, how was that money paid to you?

A. Although I would not state positively that the check was made out for $500, but I received five hundred dollars for it and I endorsed a statement on the back.

Q. Of the check?

A. Yes. I don't recall whether it was for $500 or $5,000, but I got a five hundred dollar bill, I got one five hundred dollar bill.

Q. And who handed that to you? A. Mr. Searls.

Mr. HALL.—Have you any check representing that transaction?

Mr. BRANN.—No ,I have no checks in that transaction at all in my possession, no part of it.

Mr. ACH.—Mr. Brann, while Mr. Hall has asked you that question, I will ask, have you any check of any kind other than these you have produced, checks of any kind?

Mr. BRANN.—To which I answer, no.

Mr. ACH.—Endorsed by Mr. Chapman in any way?

Mr. BRANN.—To which I answer, no. I was

(Deposition of Frank B. Chapman.)

trying to make omnibus answer covering all this matter.

Q. I invite your attention to an instrument which was executed at the State of New York, or in the State of New York, rather, in the County of Sullivan, on the 19th of August, 1913, before George H. Raum, a notary public. Is that your signature to that instrument? A. Yes, sir.

Q. Do you remember the circumstances under which that was executed?

A. Yes, I was on my vacation.

Mr. ACH.—Won't you identify the paper a little closer?

The WITNESS.—(Continuing.) I cannot do that, but I can identify [157—50] the signature. I don't recall—I did not read hardly any of these papers, as I recall. If any of these felllows asked me to sign anything, I signed it thoughtlessly, I believe, in a great many instances.

I think Mr. Thorn brought that paper for me to sign.

Q. Did you receive any money at the time you signed that paper? A. I don't remember of receiving a nickel. Q. Why did you execute that? A. Just because he asked me to, the same reason I signed the first paper.

Mr. HALL.—I offer this paper, and ask that it be marked and incorporated into the minutes at this time.

(Paper marked as Government's Exhibit 5 is as follows):

**Government's Exhibit No. 5.**

KNOW ALL MEN BY THESE PRESENTS, that I, the undersigned, have made, constituted and appointed and do by these presents make, constitute and appoint L. B. McMurtry, of the City of San Francisco, State of California, my true and lawful agent and attorney, to represent me at the annual meeting of the stockholders of PACIFIC OIL LANDS COMPANY, to be held in the City of San Francisco, State of California, on the 18th day of August, 1913, at ten o'clock in the forenoon, and at any other meeting or meetings of the stockholders of said corporation which may be held after the date hereof and up to and including the 31st day of December, 1913.

And I do hereby AUTHORIZE and EMPOWER said L. B. McMURTRY to vote as my proxy, for me and in my name, at any and all such meetings upon the stock now standing or which may then stand in my name on the books of said corporation and to do any other acts and things which I might do if personally present.

And I further hereby give and grant to my said attorney full power of substitution and revocation and hereby ratify and confirm any and all acts and things [158—51] which my said attorney or his substitute or substitutes may lawfully *to* by virtue thereof.

Witness my signature and seal, dated this 19th day of August, nineteen hundred thirteen, at the City of New York, State of New York.

Signed, sealed and delivered in the presence of:
(Sgd.) FRANK B. CHAPMAN. (Seal)
[Seal] (Sgd.) C. W. THORN.

State of New York,
County of Sullivan,—ss.

On this 19th day of August, in the year 1913, before me, George H. Raum, a Notary Public in and for the County of Sullivan, State of New York, personally appeared Frank B. Chapman, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same.

(Sgd.) GEORGE H. RAUM,
Notary Public, Sullivan County.

My commission expires on the 31st day of December, 1913.

My attention being called to a paper dated December 13, 1913, purporting to be a consent to the distribution of a dividend by the Pacific Oil Lands Company, I recall the signature, that it looks real.

Mr. HALL.—We offer this paper in evidence and ask that it be marked Government's Exhibit 6.

I don't remember who sent me that paper, or how I came to sign it.

(This paper is marked Government's Exhibit 6 and is as follows):

**Government's Exhibit No. 6.**

PACIFIC OIL LANDS COMPANY:

I, the undersigned, stockholder of the Pacific Oil Lands Company, a California corporation with its principal place of business in the City and County

(Deposition of Frank B. Chapman.)

of San Francisco, State of California, do hereby consent [159—52] that the Board of Directors of said corporation may set aside $20,000.00 of the cash assets of said corporation to be declared as a dividend upon the stock of said corporation, and such other sums from time to time as in their discretion may seem advisable; and I hereby release the Board of Directors of said corporation from all liability of every kind and character in so doing.

Dated: December 13th, 1913.

(Sgd.) FRANK B. CHAPMAN.

Q. Referring, now, Mr. Chapman, to Government's Exhibit 1 and Government's Exhibit 2, you will observe that both documents attempt to "ratify, approve and confirm those seven contracts of sale made for me and in my name by L. B. McMurtry, as my said attorney in fact with W. F. Herrin et al., of date the 4th day of August, 1910, and all contracts, agreements, deeds and conveyances, made by my said attorney for me and in my name, of and concerning said contract of sale, and sale, and also all other contracts and transations and acts made or done under said power of attorney by the said L. B. McMurtry." At the time you executed Exhibits 1 and 2, did you know the contents of these contracts with Herrin and others, bearing date August 4, 1910?

A. I don't recall that. Q. At that time, to wit, September 13, 1910, did you know how many locations of public oil lands had been made in the State of California by the use of your name?

(Deposition of Frank B. Chapman.)

A. Not that I remember. Q. Did you make inquiry of any person at that time as to how many locations your name had been used in making? A. No, sir. Q. Were you ever advised by anyone that on August 6th, 1910, Mr. L. B. McMurtry signed as attorney in fact for yourself and others, and entered into a supplemental agreement with W. F. Herrin and others, or with the Associated Oil Company, with respect to lands involved in these locations which [160—53] were made by the use of your name? A. I don't remember that I did. Q. Were you ever advised as to what sum or sums of money Mr. McMurtry received from W. F. Herrin and others, or from the Associated Oil Company, as a result of the execution of those contracts of August 4, 1910, and the supplemental agreement of August 6th, 1910?

A. No, sir. Q. What advice if any, have you received from any sources as to what moneys Mr. McMurtry or anyone else has received from the sale, lease, or any other disposition of any of the lands covered by locations on which your name was used as one of the locators?

A. I do not recall receiving any. Q. January 1, 1909, have you claimed in any of the lands covered by the locations to which I referred some time ago, namely, "Minnesota," "Massachusetts," "New Jersey," "Virginia," and eighteen others unnamed at present?

A. Knowingly I claimed none.

(Deposition of Frank B. Chapman.)

I do not know where any of these locations are or anything about them.

Q. Was there ever any portion, other than the five hundred dollars which was paid to you at the time you surrendered your certificate of stock in the Pacific Oil Lands Company, of the approximately $1,058,000, received by McMurtry from the Associated Oil Company, paid to you?

A. I never received anything but the five hundred dollars that I recall. [161—54]

Cross-examination by Mr. ACH.

Q. What do you mean, "I don't remember," "I don't recall"? A. That is what I mean, I don't; I paid so little attention to this whole affair that it absolutely passed from my mind. A great many things I have seen here, why, I must have been hypnotized.

A. Yes, I went to San Francisco as a witness in cases A–41, A–42 and A–43 in November, 1916. Went at the request of the Government's attorney. Don't recall having been interviewed by Mr. Williams or Mr. Williamson prior to going to San Francisco. Was interviewed by Mr. Hamel prior to going to San Francisco and signed the statement at that time. I think I told him the amount of money I had received was $500.00, and that I recalled signing two papers, two proxies. At the time of this interview with Mr. Hamel, these two proxies were the only papers I recalled having signed. When in San Francisco on these other cases think I was asked about these checks or money I had received,

(Deposition of Frank B. Chapman.)

and testified that I had received five hundred dollars. My recollection is that I then testified to receiving only one check, that for five hundred dollars. I don't recall positively having been asked at that time concerning the number of checks—my receipt of a check for $250.00 and one for $20.00. Have met Mr. McMurtry twice. First when I signed the power of attorney and the second time, I believe, was in the Knickerbocker Hotel. I don't recall ever having met J. B. Thickens. Don't know Major or Mr. Hoeppner. Have only heard of him. Signed this power of attorney at the request of Mr. Freeman. Had known him about a year before that. He was connected with an exhibition of mining instruments and tools, etc. I was an electrical engineer. He was employed by the mining exhibiting company and I met him at that time. Between the time I first met Mr. Freeman and the time I signed this power of attorney [162—55] I met him "possibly three or four times, just happened to met him on the street."

Q. You just casually met him? A. He came to the office, I think, once or twice, to see me. Q. On business, on account— A. No, in connection with nothing, only his own private affairs. Q. In what matter, in what particular? A. He wanted to borrow a dollar. Q. And other than borrowing some money from you, he had no relations with you at all, excepting a casual acquaintance which sprung up at the time of the mining exhibit; is that correct? A. Yes, sir. Q. And then upon one or two

(Deposition of Frank B. Chapman.)

occasions he came to see you, as I understand it, between those dates? A. Yes, sir. Q. And attempted to borrow some money from you? A. Yes, he was successful. Q. Did he repay you? A. I don't recall ever receiving any money from him. Q. What? A. No, sir.

It may have been a year or six months. I loaned him a dollar once or twice just as I would anyone, but did not consider him my debtor at the time I signed this power of attorney in Mr. McMurtry's office, although he had not repaid the money loaned him.

Q. Prior to your signing this power of attorney with him in Mr. McMurtry's office, the only relation you had with Mr. Freeman was that you had met him at this show casually, or upon the street once or twice, and then upon one or two occasions when he came to your office and asked you to lend him a dollar, and that is all? A. That is all there is to it.

At the time I met Freeman I was an electrical engineer with Rockwell & Bruce, No. 26 Cortlandt Street. Mr. Freeman was then employed by the mining show people soliciting space for the show and he would come in, when he came in, he would possibly pass the time of day, but I don't remember any particular visit. I never visited his house, and he never visited ine. I was a [163—56] salaried man at that time. I think I got twenty-five dollars a week and had no other means. I had no family at that time, and no obligations outside of my personal affairs. I never borrowed any money from

(Deposition of Frank B. Chapman.)

Mr. Freeman. At the time I signed this power of attorney my only resources was my salary of twenty-five dollars a week. Freeman first mentioned my signing this power of attorney the day I signed it. He called me on the phone and I went up to McMurtry's office on Broadway. I had never been in McMurtry's office before, and had never heard of him before. The first time recall Freeman ever saying anything to me about oil lands was there in McMurtry's office that day I signed the power of attorney. Up to that time the only business transaction of any kind or character I ever had with Freeman or McMurtry was the occasional loans I made to Freeman. I believe there were other people in McMurtry's office at the time I went there to sign this power of attorney and Freeman introduced me. I didn't notice particularly how many were there, and did not see any of the others sign their names, that I recall. I don't remember any of these people.

Q. Were you introduced to McMurtry at that time? A. I think when I left the building I was. Q. In that same room? A. No, I think it was in the hall, in front of the elevator. Q. Did anybody give you anything for signing that paper at that time? A. No, sir. Q. Did anybody promise you anything for signing? A. It was a sort of semi-promise; Mr. Freeman thought there might be a lot of money in it for me some day. Q. Why didn't you mention that on direct examination to-day when Mr. Hall asked you to tell what was said? A. He

(Deposition of Frank B. Chapman.)

asked me why I signed it, and I told him because Mr. Freeman asked me to, but he didn't ask me what Freeman said, I don't think. Q. Didn't he ask you whether you intended to put up any money, or get anything? [164—57] A. I think he asked me if I intended to, yes. Q. Why didn't you answer, why didn't you in answer to his question, then, when he asked you to tell the circumstances, what was said, why didn't you tell then that this man told you on that same day, that you might make a lot of money out of this thing? A. Why, I don't know; I don't think he asked for the conversation.

I remember Freeman's saying that we might get some money, a lot of money, or something like that. I presume he told me at that time something about Mr. McMurtry's capacity in the oil business, but I don't remember anything about the conversation.

Q. Well, why do you then think that you presume he did?

Q. Well, why do you then think that you presume he did?

A. Well, usually, if a fellow has anything, and he has an object, I presume he would enter into a sort of conversation by expressing any suggestions which might convince the one whom he wanted to do something for, that he thought it was all right. I presume—I don't recall just what he said to me, but I presume he told me all about it at the time; but I didn't pay any particular attention to that; but, as I have said before, I signed because Mr. Freeman asked me to sign it. Q. Is it true, as a

(Deposition of Frank B. Chapman.)

matter of fact, that Mr. Freeman did tell you that it was in connection with oil that he wanted your signature and the location of oil lands in California? A. It was in connection with oil lands, certainly. Q. And before you went up there and talked to him at all, did you know that Mr. Freeman had been engaged in any way in the oil business? A. I don't think I did; no, sir. Q. Then it was an entirely new subject matter when he opened it up there in Mr. McMurtry's office with you? A. So far as we were concerned, yes, sir. Q. And when he telephoned you to come up there, you did not have any idea of what he wanted, had you? [165—58] A. No, I don't remember whether he told me what he wanted me to do or not. He wanted me to come up there and see him, and he said he was located up there and he wanted me to come up there, there at the office. Q. Was there any talk at all about oil? A. Where, over the phone? Q. Yes. A. Why, he mentioned, I think, that he was with Mr. McMurtry; I don't remember whether he said anything about oil or not, until I got up there. Q. Has he been, so far as you know, engaged in any way in selling any stocks in oil companies? A. Not so far as I know. Q. And you had no reason then to, as the boy in the street would say, "Stall off," going up to see him about anything? A. No, I had nothing against the man. Q. And when he asked you to come up there and see the office, you thought it was simply to come up there, when you did go up there, and take a look around

(Deposition of Frank B. Chapman.)

the office that he was in? A. I had no especial interest in going up. Q. And there was never any talk about any oil stocks between you and Mr. Freeman, personally? A. No, sir. Q. You are reported as having said in answer to a question at page 82 of your former examination, in response to a question by Mr. Hall: "Q. Will you explain to the Court under what circumstances you executed that power of attorney? A. I knew a Mr. Freeman—I don't recall his initials—I think F. S. Q. F. H.? A. Or F. H., and I was in the office one day and he called me on the phone and I believe he said that he was connected with some oil company. I won't be sure. But he said, 'Come up and see me.' As I recall it, I said, 'I have not any more money for oil.' He said, 'Come up. I don't want you to buy any stock.' " Do you remember testifying to that in answer to Mr. Hall's question? A. Yes. I think I did. Q. And you did not remember it when I was interrogating you a few minutes ago? A. No, sir, not word for word, just casually. Q. Your mind is rather hazy and uncertain [166—59] about the whole thing, is it not? A. Some things, yes.

Yes, I was a little bit surprised to see my signature on the $250 check dated September, 1911, this morning. Yes, I think I would have testified positively that I had not put my name to such a check, if it had not been shown me. Yes, I was equally surprised when I saw the dividend twenty dollar check with my signature to it.

Q. And you would have testified positively and

(Deposition of Frank B. Chapman.)

without any reservation at all that you never put your name on the twenty-dollar check, which represented dividends in that matter, would you not? A. I would testify that I never received money on the check. Q. And would you not also have testified that you had never put your name on the twenty dollar check for dividends? A. Yes, sir; I believe I would.

I have not the letters which it has been mentioned that I received from Searls, Freeman, or somebody. I don't remember what I did with them—I threw them away. I might have written Mr. Searls, but I don't remember writing to Mr. Freeman. I kept no copies of any such letters—I don't remember of ever writing one. I don't recall sending these proxies and power of attorney and consent to a dividend to San Francisco. I believe I sent one to Thorn and the other, he came in person. I received this stock certificate No. 27. Am quite positive, through the mails. Cannot recall whether I returned the receipt through mail. Cannot say definitely when I received this stock certificate. Believe I signed my name on this stock certificate in the Knickerbocker Hotel in the presence of Mr. Searls, in 1914. Think I received this stock "two, three or four years" after signing the power of attorney.

Q. And where did you keep it meantime? A. I gave it to the present Mrs. Chapman. Q. When, please? A. At the time I got it, [167—60] when I received it. Q. She was not your wife at that

(Deposition of Frank B. Chapman.)

time? A. No, sir. My present salary is $300.00 a month. In 1914, at the time I put my signature on the back of the stock certificate my salary was $200.00 a month.

Q. Up to the time you put your signature upon the back of this piece of paper, you never had a dollar out of this thing? A. At that time I put my signature? Q. On certificate No. 27? A. Not that I recall, no, sir. Q. Let us not misunderstand. I understood you to say on your direct examination, and I understand you now to say, that it was not until after you signed the transfer of this stock at the Knickerbocker Hotel that you received any money at all in this transaction? A. Until I had handed that over, no, sir. Q. In other words, you disposed of this stock and got rid of it, and that was the first time you ever got a dollar from anybody on this transaction? A. Yes, sir. Q. And that is absolutely so, as you recall it? A. Yes, sir. Q. Have you any explanation to make as to why you put your name on the back of that check of September 11, 1911, for two hundred and fifty dollars. A. No, sir. Q. Have you any explanation to make as to what you did with the check for $20.00 after you put your name on it? A. No, sir. Q. Not the slightest recollection about it? A. I don't remember anything about either one of those checks.

Aside from talking about locating oil lands, I don't recall any of the conversation at McMurtry's office at the time I signed that power of attorney. Was there possibly ten minutes. Don't know why

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Freeman picked on me to sign this power of attorney. Think he said that I came to his mind as one of those that he would like to let in on it, or something of that kind. [168—61] Don't believe he said anything about doing this as a kindness in return for the loans I had made him. He said I might get something out of it, but didn't say how, that I recall. He seemed very sincere and I think he thought he was giving me a good thing. He seemed to have a whole lot of confidence in the proposition that he was promoting. I don't remember asking him what he meant by the location of lands, or what location meant. Know I did not know. Presume I made inquiries of him, but would not swear that I did. Don't recall that I asked him what a location meant.

Q. I have before me your answer at page 82 to the same question that I read you a little while ago, in which Mr. Hall asked you to explain the circumstances under which you executed the power of attorney, and I will now read further in that answer, immediately following the excerpt that I read before to you, and we have you reported as follows:

> "So I went up and met Mr. Freeman and looked around the office, and while I was there I told him that I was in a hurry; and he asked me to sign this paper, which I assume is a power of attorney. I asked him what it was; that I did not have time to read it particularly; and he said, 'Well, there is a Mr. McMurtry from the west. He is a big oil man. I know

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some people around New York, and he is a practical stranger, and I have agreed to get a certain number of names for him as locators.' I said, 'What does locators mean?' and he painted it in a rather flowery way, and he says, 'You might get a lot of money out of it some time.' I said, 'All right; if I can sign this paper and it is not going to get me into serious difficulty and don't cost me anything, I will sign it.' And did sign it." [169—62]

Do you remember testifying to that? A. Yes, sir. Q. And by reading this, does it recall to your memory that you did ask him what locators meant? A. I don't think in my testimony here I said—Q. Well, go on. A. I said I did not recall it. Q. Now, please answer my question: Does my reading this transcript of your testimony, or excerpt from the transcript of your testimony now refresh your memory to the extent that you can say positively that you did ask him, as you testified before, "What does locators mean?" A. Yes, sir, I would say my testimony is right. Q. I am not asking you about that. I am asking you, do you now remember that you asked him the question, "What does locators mean?" A. Practically the same thing, yes, sir. Q. Did you remember that you did ask him that question at the time you testified in San Francisco, in November, 1916? A. Yes.

I do not recall what answer he made to this question.

Q. Outside of painting the thing to you in a very

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flowery manner, and telling you that you might make a lot of money out of it, what did he tell you, or anybody tell you what was meant by locating lands in California under that power of attorney? A. Why, as I recall it, he said something about a locator, in order to get a patent or something, he had to have so many locators' names, and that if he could get the locators' names he could go on and locate lands and work out the assessments, or something of that kind, or words to that effect—I don't know.

Think I met McMurtry as I was going out after having signed the power of attorney.

Q. And didn't he also tell you in substance, substantially to this effect, in a general way, that Mr. McMurtry was a man who knew California, knew where oil lands were; that he was going out there again and he was going to devote himself to a search for oil [170—63] lands belonging to the Government, and that having the right of each citizen to locate lands, that he wanted to be equipped so that he could locate lands in California, if he found them, and that the locators secured here in New York would be advised sooner or later whether he located any lands in their names or not—any conversation to that effect? A. Why, not that I recall, words to that effect, possibly. This is ten or eleven years ago.

I cannot say what the conversation was, but it was in that—anyway it was in that connection—I don't know. No, I was not trying at that time to aid or

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assist McMurtry or Freeman to commit a fraud upon the Government and get more land than an individual was entitled to under the laws.

Q. You do recall that he said to you that you and all other individuals in the United States, had a right to locate public lands, do assessment work upon the lands, and after discovery of oil, get a patent from the Government; you remember that? A. Yes. Q. Now, you did not understand, did you, that you were going to make money out of this thing, as he painted it, simply by signing your name, did you? A. No, sir. Q. And you expected that in the event that anything came out of this man acting as your agent, and using your name, you expected to be advised of it, didn't you? A. I don't think I gave it any thought.

No, I had no arrangement or contract with Freeman or McMurtry that I would be advised of it that I recall. No, I had no arrangement with Freeman whereby he would go down in his pocket and pay for the assessment work that was required under the law in the event that he located any lands for me in California. No, I had no such arrangement with anyone. No, there was no understanding or agreement of any kind or character between myself and McMurtry when I left that place. Yes, the entire conversation [171—64] that occurred there was between Freeman and myself and those other gentlemen, until I met Mr. McMurtry in a casual way, that is all.

Q. Well, can you tell what passed between your-

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self and McMurtry after you signed the power? A. Mighty few words.

Mr. Freeman introduced me as an electrical engineer and he said, as I recall it, Mr. McMurtry, Mr. Chapman is a good man for us, because he is an electrical engineer, and we might have occasion to use him in California some time. Mr. McMurtry shook hands and said "That is good," or something like that, and took the elevator.

Q. I suppose there was more or less desultory talk about a great amount of oil being found out there in California, great gushers, and selling land at two dollars and a half? A. I always heard more or less about oil lands and gold mines. Q. And you regarded this step as the initial step in the ladder of getting rich in life, didn't you? A. No, sir, not at all. Q. You did not think that he was lying to you entirely, did you, when he painted it in a flowery way, as the great big money you would get out of it some time, did you? A. I never expected to get a dollar out of it. Q. No matter about that. A. He might have. Q. But you, yourself, thought it might be among the range of possibilities that you might by reason of some lands he might locate in your name? A. No, sir. Q. And you thought you were doing an absolutely idle and vain act, at that time? A. I did as far as any moneys or profits coming to me. Q. It was then simply a lack of confidence on your part in the picture which he painted? A. Yes, sir. Q. You don't mean to be understood as saying that if he located lands in your name, reported it to

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you [172—65] and told you that he had done assessment work out there, and borrowed money upon the lands to drill wells, well, say to the extent of ten thousand dollars, and that he had gotten an oil well upon 160 acres of that land, and that he had had an offer of one million and a half dollars for that land, but in order to get the million and a half you would have to apply for a patent and pay the Government two dollars and a half an acre that you would not have put up your money, do you? A. I would have investigated before I would have expended any large sums of money. Q. And if you had found out it was true, would you have put up your share and gotten the land? A. If it was possible, and thoroughly legal, legally possible, possibly I would, yes, sir. Q. You would not have said to Mr. Freeman, well, you are entitled to my share of this million and a half, would you? A. I might have done so upon investigation that it was not what I thought it ought to be. Q. In other words, you would have felt no obligation or under those circumstances Mr. Freeman could have your share of the million and a half. A. You would understand that I would have a thought that I had no money invested in this proposition.

I presume I read this power of attorney before signing it and understood that I was giving him the right to locate in my name under the laws of the United States, either mineral or oil lands.

Q. Now, this power of attorney goes on and further gives him authority to grant, bargain, to sell,

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assign, lease, pledge, mortgage, deed, any part or all of such mining claim or claims, and to execute and deliver any contract or contracts of sale, deed or deeds conveying any part of your interest in and to any such mining claim or claims as might be acquired here in any part of the United States of America, and giving him full power of authority, [173—66] and with full power of substitution. Now, when you read that, if you did read it at that time, you also recognized the fact that you were giving him the right to sell, assign and mortgage these properties which he might locate for you and in your name; do you remember that fact? A. Well, I don't remember what really the paper was; I cannot recall that.

Having heard it read it does not come back to my mind; not a thing, absolutely. I certainly don't recall what it was. Yes, I was in business for myself before signing this power of attorney; was interested in an officer in an electrical business doing a considerable business throughout the country. Yes, the firm occasionally signed checks, promissory notes, and contracts and specifications and things of that kind. Yes, I would frequently, as officer of this company, sign the firm's name to checks, notes, contracts, specifications and such things. Yes, I would always read them over and always knew what I was signing. Yes, I understood there was some responsibility to a man's signature to every document that he signed, and knew this when I signed the power of attorney. Knew that I would be

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bound by my signature. I think the first that I knew of anything having been done under this power of attorney was when I received the stock. Received this through the mail. Yes, I am quite positive I received it through the mail, but I would not state positively, but I think that is right.

Q. Are you not positive that the next thing you heard about the matter, after signing the power of attorney, was when you received the stock? A. I may have gotten a letter from Mr. Thorn, or Mr. Freeman, but I think I got a letter from Freeman, I believe it was before I received the stock.

I was then at Cumberland, Maryland. Don't know where the [174—67] letter is. Don't remember what it said or anything about the language in it. I should say this was two or three years after the signing of the power of attorney. I don't think it was as much as four years, it was before I got the stock. Am quite sure it was not within a year and a half after signing the power of attorney. As well as I recall, that was the first I had heard of this matter after signing the power of attorney. No, I have not been ill since signing this power of attorney and have not noticed that my memory has been affected in ordinary affairs. The only way I can account for failure to remember my signature on these two checks is that "I don't remember it and that is all." Yes, I am quite positive that the first time I heard anything about this transaction after signing the power of attorney was

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when I got a letter from Mr. Freeman, in Cumberland, Maryland.

Q. Now, just look at the dates of this ratification or these ratifications in front of you, and tell us about them? A. This is in 1910. Q. Yes, I know that; but I say, how did you hear about this? A. I don't remember. Q. Did you receive the letter from Freeman before you signed these ratifications? A. I believe so; yes, sir. Q. Then when you got the ratification, you had already had some kind of report from Freeman as to the transaction in California? A. I don't remember as to that.

This letter had no reference to those ratifications. Yes, at the time I signed those ratifications I had received this communication from Freeman concerning the California enterprise.

Q. Well, now, after you got that communication and before you signed those papers, was there any hope or promise or suggestion made that this thing you did not regard as anything at all when you signed your name, might develop into something? A. Yes, I think that was in Mr. Freeman's letter. Q. Well, what was in the [175—68] letter? A. He referred to the paper I signed and said—I don't recall just what he said—he referred to the paper I signed, that it looked pretty good; they had—I don't recall what it said, but it might be a good thing, and I signed it, or something of that kind; things looked good out there, or something to that effect.

He may have mentioned McMurtry, but I

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don't recall. Nor do I recall his mentioning that McMurtry was locating oil lands with the powers of attorney. No, I did not write him for further details; paid no attention to it. I was travelling at that time for the National Carbon Company and think I was getting eighteen hundred dollars a year. No, I hadn't made any money in stock speculation or otherwise than just my salary between 1907 and that date. All I had was what I had saved out of my salary. No, I was not in debt. I can't say how much I had at that time. Yes, I presume I had as much as $2,500. Don't think I had more than that.

Q. Now, this letter, then, of Freeman's, did you regard that at that time as an encouraging letter to you, to spur you on, for you to go on, or did you regard it as an expression of a view, based upon information which he had from McMurtry, directly or indirectly, concerning these oil land locations in California; do you understand the question? A. Yes, sir. As I said before, I had absolutely no confidence in it, but I do not think I gave the thing any thought. Q. But when you got this letter—just kindly heed the question, and the reporter will again read it to you. Q. (Question read.) A. Why, I presume it was a letter to spur me on, if that is the way you want to put it; but it didn't spur me, if that is what you want to know. Q. You didn't need any spur? A. No, sir, not in that direction. Q. What did he know about your circumstances at that time that would cause him to write

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a letter to you, simply to spur you on in your enterprise? [176—69] A. I don't know whether he felt under obligations to me in any way or not, I don't know. Q. You don't think he was lying to you wilfully or deliberately? A. Probably he thought I would be interested in it as he was. Q. You are reported in the other case as having said in answer to questions from Mr. Hall, at page 84:

> "Q. After you signed it, when did you next hear from it or anything about it?
>
> "A. I won't be sure about that. It seems to me, though, as near as I can recall—well, I won't say that, because I think,—well it was about two years, I should say, afterwards, as I recall it.
>
> "Q. What was that communication, or what did you hear in regard to it?
>
> "A. I got a letter from Mr. Freeman. I was then in Cumberland, Maryland, on the road, and I think he said at that time that he had seen Mr. McMurtry, and he says, 'You recall the paper you signed. It looks just as though we are all going to be rich some day.' That was all there was to it, I did not reply to the letter."

Do you remember that now? A. I think I remember the testimony, yes, sir. Q. Do you remember that? A. Yes, sir. Q. Was that true, is that what he said in the letter? A. I believe it was, substantially, that. Q. You didn't remember that when I interrogated you to-day, that you had used

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the phrase that he said it looks as though we are all going to be rich some day. You didn't think it went that strong, did you? A. I believe he painted it flowery, as I said before. Q. I am not talking about his painting it flowery, but about this letter and your recollection, [177—70] and memory. You didn't remember that when I interrogated you, when I asked you to tell me—A. Well, words to that effect. Q. You didn't remember that? A. Not exactly; no, sir. Q. Now, that I have read the record to you, do you remember that substantially, that language was in the letter? A. I would say words to that effect, yes, sir.

Q. If you will permit me, Mr. Chapman, I will call your attention to Government's Exhibit No. 1, and I am going to read it to you, as Mr. Hall did, and at the time he was reading it you read it, didn't you? Follow this. A. Yes, sir. Q. Do you know what is understood, what the paper is without reading it again? A. I cannot say word for word. Q. Does it mention these powers of attorney? A. Yes, sir, I think so. Q. In what manner does it mention it, what does it say? A. I cannot say as to that. Q. Does it mention any contract concerning located lands? A. I think it does. Q. Does it give the date of any contract? A. I cannot be sure of that. Q. Does it give the name of anybody with whom it is understood any contract was made? A. I don't remember that. Q. In what manner does it refer to any contract, have you any recollection at all? A. No, I was looking mostly at my signature

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when Mr. Hall showed it to me. Q. But you did read that, and you heard him read it? A. Yes, sir. Q. Won't you please tell me, if you can, what reference it makes to the contract referred to in the instrument itself? A. I cannot tell you. Q. What is the general purpose of the instrument, do you know? A. No, I would not say definitely. Q. All right. Now, at the time that you signed it, you were in Greene County—you know Greene County, don't you? A. I know where it is, yes. Q. What towns in Greene County were you making in the year 1910, in August or September? A. I was on my vacation. Q. Oh! Then [178—71] you remember that you were in Greene County on your vacation in 1910? A. Yes, sir, I was. Q. Where were you? A. Platts Cove. Q. And while you were there you found a notary, did you, by the name of Rudolph Loreck, or something of that kind? A. I don't recall his name. Q. But you recall going to a notary public with the original piece of paper? A. Yes, sir. Q. Was anybody with you? A. No, sir. Q. How did you receive the original while you were at Platts Cove, or did you carry it there with you? A. I received it by mail. Q. From whom? A. I think Mr. Thorn. Q. C. W. Thorn? A. Yes, sir, I think so. Q. Then you must have received a letter with it? A. I presume so. Q. Do you remember it? A. Yes, sir. Q. Where is that letter? A. I don't know. Q. Do you think you have got it? A. I know I have not got it. Q. Then you know it is destroyed? A. Yes, sir. Q. What was in the letter? A. I cannot state posi-

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tively, but something about a proxy he would have me get back to him as they had to get it to California by a certain time. Q. Was anything said in the letter about enclosing you any paper that you should sign before a notary public, and acknowledge, and send it back to anybody? A. I believe so; I believe I sent it back to him. Q. Did you or did you not send it back to San Francisco? A. I don't remember. Q. Was anything said in the letter about the proxy and as to who was to have this proxy? A. I think he mentioned Mr. McMurtry's name. Q. And it was that Mr. McMurtry was to vote the stock; is that it? A. Yes, sir. Q. And that is the stock that stood in your name; is that right? A. I don't know whether it was to vote the stock, but he was to be the proxy, to vote his locator, or something of that kind. Q. Well, then, when you got this letter in 1910, at Platts Cove, you had already heard from [179—72] Mr. Freeman to the effect that it looked as though you were all going to get rich out of this thing? A. I am quite sure it was previous.

This communication from Mr. Thorn was the second one that I had concerning this matter after signing the power of attorney. Think I met Thorn in New York at the Knickerbocker Hotel at the same time I met McMurtry, or the second time. I can't say just when I did meet Thorn. I think I received this paper, Government's Exhibit No. 1 by mail. Am quite sure of that and think I received it from Mr. Thorn and must have met him before that. I can't say when. I met him down town with Mr.

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Freeman but I can't tell where or what time. In this letter enclosing this particular paper, Government's Exhibit 1, as near as I can remember, Mr. Thorn "wished me to sign this proxy and get it back to him as soon as possible, because Mr. McMurtry wanted to use it on or before a certain date." I would not say positively whether I read it over. Yes, I knew what it was. I presume I read it; I must have read it, but cannot say what was in it. I know it was a proxy and as soon as I saw it I signed it and sent it on.

Q. I will read it to you. (Proxy read.) Do you understand the last portion of that paper which I have just read to you? A. Well, the whole thing is not clear, no, sir. Q. You understood when I read this paper to you, that you were ratifying the power of attorney which you had before given to Mr. McMurtry, didn't you? A. I presume I did, yes, sir. Q. And you understand English well enough to know what you were putting your signature over a paper which declared that that power of attorney was in full force and had never been revoked or modified by you, didn't you? A. I didn't give it that much thought. [180—73]

I don't believe I read it thoroughly. I won't say whether I did or not. I don't remember to whom I returned this proxy but think I returned it to Mr. Thorn. May have sent it to San Francisco. That is my signature on Exhibit No. 2, which is the same as Exhibit No. 1—the same as Government's Exhibit 1, with the exception of the date. I have no posi-

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tive recollection as to when or where I signed Exhibit 2.

Q. Explain, if you can, why it is that two documents, reading exactly the same, with the exception of the dates, were signed by you? A. I signed anything I was asked to; when I signed the first one—I signed anything they thought I was to give. Q. Who asked you to sign the second one? A. I cannot recall.

Don't remember how long I kept the second paper before signing or where I signed it. Believe I signed one at Kenosa Lake, New York. My attention being called to the fact that this Exhibit 2 was acknowledged in Luzerne County, Pennsylvania, I will say that I was at Wilkes-Barre, Pennsylvania, which I think is in Luzerne County. I don't remember going before a notary then. Am confused on that point. I signed it and must have gotten it, but don't remember how I got it. I thought so little about the thing, I don't remember what I signed. Between the dates of the signing of these two papers, I first recall having seen Freeman or receiving a letter from him. Correcting my former testimony will say that my present salary is three thousand dollars a year instead of $300.00 a month. Don't remember when I met Mr. Searls. Think it was at the Knickerbocker the second time I met McMurtry. Don't remember the date or the circumstances. Cannot say that I didn't meet him at the time I signed the power of attorney for the location of lands in California. Have no way [181—74] of fixing the time when I

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met Searls. Don't know who introduced me to him. I recall the only time I met McMurtry aside from the time I signed the power of attorney was at the Knickerbocker, some time after signing the power of attorney. Don't recall just when it was. Don't think I met McMurtry between the time of signing the power of attorney and the execution of the ratifications. Don't remember meeting Searls during that time, or Freeman. Don't recall signing any papers in connection with this matter between the signing of the two ratifications. Yes, if I did it was in good faith as far as I knew. Would say I met Searls about three times in all. Don't think I ever met Freeman after signing the power of attorney until I met him in San Francisco when I was a witness.

Q. How many times did you meet Mr. Thorn from the time you signed your power of attorney up to the time you went to San Francisco? A. I would say three or four times. Q. Can you tell me the place or places where? A. Why, I recall once when he came after my proxy at Kenosha Lake and on the train at Middletown, and I believe he was present when I met Mr. McMurtry the second time at the Knickerbocker Hotel.

I think I had met McMurtry twice before going to San Francisco; the first time, the time I signed the power of attorney and the second time at the Knickerbocker Hotel. I think Freeman, Thorn and Searls were present at the Knickerbocker Hotel, when I saw McMurtry. They are only the only ones I know.

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I have not a definite recollection of Freeman being there. It is possible that he was not. Think Freeman phoned me that McMurtry was at the Knickerbocker and wanted to see me and that Freeman was present at the interview. Am quite positive he was there. Would not say positively, but think Searls was there and also Thorn. Don't [182—75] recall anything that Freeman said to me at that time, or Searls or Thorn. The conversation was between McMurtry, I think, and the rest who were present. I don't recall what was said by a single one other than McMurtry. I recall that someone phoned me that "McMurtry was on from the west and would like to have me come up and meet him and hear what he had to say, or words to that effect."

Q. Well, you went. A. Yes, sir, and I told him I was very busy, but I would try to come up.

No, I had no other business with McMurtry except because of this power of attorney. Yes, I went there during business hours the same day that I was phoned. Stayed there about fifteen minutes, possibly longer. Have not read over the testimony that I gave in San Francisco, nor has it been read to me. Have no copy of it. Have no epitome of it. At this meeting at the Knickerbocker Hotel, all I recall is what Mr. McMurtry said, and I don't recall all of that, but he told of what a hard time he had had to hold the locations for lands, or something of that kind; that he had sat up nights, etc., to keep on the job; and I think at that time he said that there were some moneys coming to us, but they did not have it;

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they were in pretty hard shape, and I think he said that he was going, they were going to form a company for the locators, or something to that effect. That was all I remember.

Q. Did he speak about having advanced moneys and paid out moneys? A. Yes, I think he did. Q. Did he speak about the assessment work that was done? A. I believe he mentioned that in connection with his experience. Q. And did he speak about making a contract for drilling for oil upon some of those lands with somebody? A. I don't recall that. Q. Did he speak about the prospective value of these lands. A. Not that I recall. [183—76]

Don't remember that he said where the lands were. Yes, think he said something about somebody trying to jump the land that he had located. Don't recall that he spoke of risking his life prospecting lands or that he was guarding them with guns. Don't recall having heard from Freeman, Searls or Thorn anything about jumpers or trouble in holding these lands, or borrowing money in order to protect his interests that he had located. As near as I can recall, it was McMurtry who told us this at that time.

Q. Did he say anything about your being entitled to any money at that time? A. I think so. Q. What did he say in that regard? A. I think he said we were entitled to—I think he said we were entitled to $250, or something of that kind.

No, he didn't give it to me. He said they were in hard shape, financially. No, I did not then tell McMurtry, "What have I got to do with that? That

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does not interest me." No, I did not repudiate the transaction at that time and say to Mr. McMurtry, "Why, you have not got any money from me," nor that the fact that he was risking his life protecting these lands did not concern or interest me. I do not recall that he told me that I could look for $250 out of the enterprise or give me any encouragement as to an early return.

Q. No. Didn't tell you a word about having made a contract, and that it would depend upon whether the locators ratified the contract or not, as to whether he would get any money out of it or not, did he? A. He might have mentioned that; I believe he did say something about it, that it depended upon what the Government did, or something of that kind. Q. Did he also tell you at that time that he expected a little trouble with the Government on account of withdrawals? A. I don't remember withdrawals, or [184—77] just what he said. Q. But you now have a recollection that he did speak to you about the fact that he had made a contract with somebody for something on all of these lands that had been located, and it was necessary before he got any money out of it, to get a ratification from the locators? A. I don't remember that. Q. You just said a little while ago, as I understood you, that you could recall something about a contract? A. No, not about a contract, he did not, but about what the Government would do, and as to whether they could hold the lands.

No, I don't recall at this meeting Mr. McMurtry making any allusion to the fact that he had received

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my ratification of such contracts, No, I received nothing at all at that meeting. Do not recall that I signed anything at that meeting, but will not say that I did not.

Q. I show you check 159, dated New York, September 11, 1911, signed F. H. Searls, which has your signature under the following language:

> "Received from L. B. McMurtry, $250, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to L. B. McMurtry, bearing date the 21st day of December, 1907."

Will you testify positively that you did not put your name on the back of that check under that writing at the Knickerbocker Hotel in 1911, in the presence of Mr. McMurtry and Mr. Searls? A. No, sir.

Q. You will not so testify? A. No, sir.

Q. And so far then as your present recollection is concerned, it might be true that you did put your name on the back of that check at that time and place? A. It might be possible. [185—78]

My attention being directed to certificate No. 27 for 1000 shares of stock in the Pacific Oil Lands Company, issued to Frank B. Chapman dated September 1st, 1911, and the receipt attached to the margin of that certificate pasted in the stock certificate book, which receipt reads: "Received certificate for 1000 shares of Pacific Oil Lands Company, dated September 11th, 1911," I cannot say where I

(Deposition of Frank B. Chapman.)

was on September 11, 1911, or what I did with this receipt after signing it. At the time I received this five hundred dollar bill from Mr. Searls, he handed me a check which I signed and then he handed me the bill.

Q. Did you receive five hundred dollars for the check or did you receive five hundred dollars for your stock?

A. I suppose the check was for the stock.

Q. Did you sell your stock to Mr. Searls?

A. I turned it over to him.

I think this was at the Knickerbocker Hotel, though it may have been some other hotel. It was not on the occasion that I met McMurtry there. It was afterwards. It was in Searls' room and I think at the Knickerbocker Hotel. I am certain it was in New York. No one else was present besides Searls and myself. I went to his room and after the formal shaking of hands, he said, "Did you bring your stock?"—this is approximately—and I said "Yes," and he said, as near as I can remember, he said, "Well, I want you to turn it over to me, because," he said, "we may have some trouble," or something like that, "with the Government," or something, "in holding your patents, and you will never get any more out of it anyway," and "you will possibly never have another occasion; it will never be worth any more, and we are going to pay you for the favor you did us, if that will do it." I said to him, I said, "I don't see what I have done, Mr. Searls, to warrant this receipt of this money,"

(Deposition of Frank B. Chapman.)

and he said, "Well, that [186—79] is all right, you have done the same as the rest of the locators, you gave us a power of attorney, and we think it is worth that much" or words to that effect. So he says, "Have you got the stock with you?" And I said, "Yes," and I gave it to him, and he took out his purse and he said, "You sign this paper," which I did, and he handed me a five hundred dollar bill.

Q. Now, Mr. Chapman, repeat to me, after telling me the place where it was held, any conversation that occurred at the time that you got the certificate for 1000 shares of that stock.

A. As I recall it, both shares were mailed to me in one envelope.

Q. When you say "both shares" what do you mean? A. Both certificates.

Q. What do you mean by "both certificates"?

A. I received one for 1000 and the other for 700 or 750.

Q. Mailed to you by whom? A. I do not recall.

I think they were sent by Mr. Thorn. Don't recall that any letter came with them. No, I had no transaction whatever with Mr. Thorn which warranted him in sending me these certificates. I assumed he was acting as an agent for Mr. McMurtry. I cannot say why McMurtry sent them. I believed at the time that it was in payment for this $250, or something of that kind, that he claimed was due us. Yes, all of this was after this conversation with McMurtry, and I think after I received a letter from Freeman at Cumberland, Maryland, telling me I

(Deposition of Frank B. Chapman.)

might get rich out of this thing, or something to that effect.

Q. But you had been advised, as you have already testified, by Mr. Freeman as to the possibility of getting rich, and by Mr McMurtry as to the trouble that he was having with the holding of these lands, and by Mr. McMurtry as to the making of a contract or contracts for the sale of these lands?

Mr. HALL.—I do not wish to interrupt counsel any more than [187—80] is necessary, but, in order that the Court, before whom this cause has to be finally heard, may not misjudge my silence, I want to now protest against the extended and useless and argumentative cross-examination of this and all other witnesses.

A. The first two, yes; the last one, I cannot, I am not sure of.

Q. Notwithstanding the fact that in the year previous you had ratified the contract that he had made in your name, still you are not sure that you knew him? A. I presume I did at the time.

Q. When Searls told you that he wanted to give you something for what you did and you had better take five hundred dollars or maybe you would not get anything the next time, or something to that effect; and, in order not to be taken to task by Mr. Hall, I am only undertaking to state the substance of your answer, and in order to cure any possible defect in his quotation, I refer to the last answer that you made as to the conversation with Mr. Searls, did you suggest to him that the statement had been made

(Deposition of Frank B. Chapman.)

to you by Mr. Freeman that you were going to get rich out of these locations?

A. I don't think so, no.

Q. Did you tell him at that time that you knew that a contract had been made for the sale of these lands, and asked him how much money had been realized from them? A. Not that I remember.

Q. Did he make a report to you as to what had become of it? A. I don't think he did.

Had only one talk with Mr. Searls and that was at the Knickerbocker Hotel at the time he gave me a check which I endorsed, and in lieu of the check he gave me a five hunded dollar bill, and it was on that occasion that I endorsed the stock and gave it to him. He had either phoned or left word with my landlady for me to come to the hotel and bring the stock.

Q. Mr. Chapman, what reason had Mr. Searls assigned to you desiring to buy your stock for $500 and in the same breath to tell [188—81] you that if you did not take $500, that you would probably not get anything. What reason did he give you for that stand?

A. Well, he said they expected, I think—they were having some trouble with their patents, etc., and things were in an unsettled state, or words to that effect, and things were uncertain.

I don't recall asking him what the nature of the trouble was or his telling me or that he spoke of the fact that some of the lands had been disposed of to Mr. McLeod, the Associated Oil Company, or any-

(Deposition of Frank B. Chapman.)

body else. Don't recall that he said anything about the land having been withdrawn after locations were made.

Q. Did he tell you that he was buying this stock for himself or somebody else?

A. He said they were simply redeeming it, that was all.

Q. Had he told you that he had any interest in that land, or in that corporation? Why, I believe he did.

Don't know that he told me that he was one of the locators but I assumed that he was. He did not tell me he was selling his stock for the same amount of money or tell me who the bearer was. The reason he gave why the stock was wanted was that "They might have some trouble in holding their patents, or holding the lands." No, I don't recall receiving a letter at the time I received the stock advising me to hold it and it would probably be very valuable, though I will not say that I did not. Put my signature on the back of this certificate of stock transferring it to Walter S. Brann at the time I met Searls at the hotel, I think. It might have been then or it might have been before, I don't recall. Don't remember that Brann's name was on there when I signed it. Have no recollection of putting my signature on there at the time I gave the certificate to the young lady to whom I was practically engaged at that time. She had it from the time I handed it to her when I received it, to the time when it was surrendered to [189—82] Mr. Searls, I

(Deposition of Frank B. Chapman.)

should say approximately two years. Never had any falling out with Mr. Freeman. Don't recall having any talk with Thorn about the sale of this one thousand shares of Pacific Oil Company stock or about its value. When I disposed of this one thousand shares, the other 750 shares of whatever company it was went with it. All of this stock was given to the lady. She had the whole thing. I don't know that I gave it to her outright; I handed it to her, and that was all; I did not turn it over to him, or anything of the kind.

Q. I misunderstood you. I thought you had given it to the lady as a present?

A. Well, she could have had it.

Q. Oh, I suppose she could have had anything you had?

A. Yes, sir, or anybody else could have had it.

Q. But nobody else could have had the five hundred dollars which you got?

A. Well, they could have had it the day before.

No, I didn't know when I received this $500 what McMurtry had received for these lands.

Q. But you did hear when you were in San Francisco at the time you got this five hundred dollars he had already received a large sum of money, up in the millions, for these properties that were located?

A. Well, I don't know that I heard any definite date or when it was received.

Q. Didn't you ask? A. I don't think I did,

Q. You didn't pay enough attention to it when

(Deposition of Frank B. Chapman.)

you were in San Francisco to ask any questions about it? A. No, sir.

Did not hear McMurtry's testimony though I heard one or two testify.

Q. I want you to explain me, if you can and will, why the day before you sold the stock to Searls for $500, you said you were willing to give it to anybody for nothing?

A. I did not [190—83] expect any money for it.

Q. Yes.

A. And I thought when Mr. Searls asked me to come down, he wanted the stock back.

Q. Now, I want you to explain how and why you say that on December 13th—I want you to explain why it is you can say you had given that stock away and asked no questions about it, when, on the previous December, and the 13th of that month, you signed a consent as a stockholder in the Pacific Oil Lands Company, that that corporation should set aside $20,000 in cash assets to be declared as a dividend upon the stock of that corporation, and also such other sums from time to time as the Board of Directors in their discretion might deem advisable; I want to know your reasons for being willing to give away stock of any corporation which you consented in the December previous that they could pay a dividend of $20,000?

A. Because I never expected to get a cent out of it when I signed it.

Q. Did you think it was a fake when you signed that consent to a dividend of $20,000?

(Deposition of Frank B. Chapman.)

A. I had no confidence in it.

Q. Did you think it was a fake when you signed your consent to a payment of a $20,000 dividend?

A. What do you mean by "fake"?

Q. I will answer your question by asking you to tell me what you thought you were doing when you signed a consent to the Board of Directors of that company as a stockholder to declare a $20,000 dividend?

A. I cannot tell you what I thought at that time.

Q. Who got you to sign Exhibit No. 6, a consent to a $20,000 dividend, dated December 13, 1913?

A. I cannot tell you. Nor can I tell when I signed it nor what I did with it. Don't remember signing it. Hearing it read I still do not remember signing it nor do I recall receiving a dividend. [191—84]

Redirect Examination.

Q. In your cross-examination you have referred to signing two proxies. I invite your attention to Government's Exhibit 1 and Government's Exhibit 2; are those the papers which you designate as proxies? A. I do not recall signing this one (indicating) but I assume it was a proxy; and I do recall two instances when I signed papers very vividly, because I was on my vacation in each instance, and Mr. Thorn came to Kenosa Lake for the last one, and I signed it in his presence, but whether that was the proxy—I think it was the proxy; I don't see that here. Q. The first time you met Mr. McMurtry was when, before or after you had signed the power of attorney? A. After. No, I don't

(Deposition of Frank B. Chapman.)

think I was asked to put up any money on account of the improvements on these lands at the time I had the conversation with McMurtry at the Knickerbocker Hotel. [192—85]

**Deposition of Charles W. Gardiner, for Plaintiff.**

CHARLES W. GARDINER, called April 16, 1917, on behalf of the plaintiff, testified by deposition as follows:

Reside at 235 North Pine Avenue, Chicago, Illinois; am a physician and manufacturer, manufacturing steel cabinets and makers of clamps. In December, 1907, my home was in New York, and was temporarily in New York City. Did not have any occupation. Am a practicing physician, graduate of the University of Vermont '91. Not now practicing to any large extent. Am the Charles W. Gardiner who, together with others, executed the power of attorney, Plaintiff's Exhibit 5. Signed it on the representation of a friend of mine, Frank H. Searls. Had known him since boyhood days. Was not very intimately associated with him. It was about a couple of weeks before executing this paper that he asked me to do so. My remembrance is this occurred at his place of business on East Sixteenth Street, New York City. He set forth that they were trying to get several of their friends to—I do not recall whether it was to enter into an agreement—as I understand it, it was to go in it together for the purpose of attempting to discover or locate certain properties. They were Mr. Thorn,

(Deposition of Charles W. Gardiner.)

Mr. Searls and a number that I did not know at that time. Was not at that time acquainted with Mr. L. B. McMurtry. He set forth that there was an opportunity of attempting to locate certain lands for something or other, it might be metals or oil or some other matter, and that there was an opportunity and probability that we might discover something and thereby get a profit out of it. Understood that the lands were in California, and they might be elsewhere. Saw Searls practically every day. The next time I recall discussing this particular subject was at Batavia, New York, after signing the power of attorney. The day the power of attorney was executed he told me to go down to a certain building near the United States Post-office in New [193—86] York City, and that I would find there Mr. Thorn, whom I had met, and I was to execute before a notary a power of attorney to Mr. McMurtry. I read over this power of attorney. The next time I talked to Searls about this was at Batavia, New York, about six months later. Nothing was then said except that in his opinion it was going to probably turn out to be a good thing. Remember several circumstances in connection with this transaction, but the order in which they occurred I cannot swear. Remember receiving a communication, I think from Mr. Searls —I don't know whether it came from Mr. Searls or not—I received a communication asking me to verify the power of attorney which I had given to Mr. McMurtry. I should say that is my ratifica-

(Deposition of Charles W. Gardiner.)

tion. I recognize the duplicate signature and that of the notary.

(This ratification read in evidence as Plaintiff's Exhibit 7. It is similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman, and purports to have been executed August 15, 1910.)

This paper came to me by mail. I don't remember from whom. There was a letter accompanying it which has been destroyed or lost. It said that it was desirable to verify the power of attorney that I had given; of course some reason must have been given, but I cannot explain now just what that letter said. My recollection is that I forwarded it to Mr. McMurtry's office in San Francisco. Think I received it from McMurtry. Was not then personally acquainted with McMurtry. The next incident growing out of these transactions that I remember was signing a proxy for Mr. McMurtry to vote for me at a counsel meeting. My remembrance is that I received it from McMurtry and returned it to him. Do not remember the date. It was for the purpose of voting my interest in the matter which Mr. McMurtry had in hand. [194—87]

I received shares of stock but don't remember whether it was before or after that particular time; received no money or other thing of value at the time I executed this ratification. Later I remember receiving a check for twenty dollars. Think it came from McMurtry's office. Don't recall

(Deposition of Charles W. Gardiner.)

receiving any money prior to that, but I endorsed a check for $250. Received no money by reason of endorsing that check. That is my signature on the back of check dated New York, May 6, 1911, No. 149, drawn on the Second National Bank of the City of New York, payable to the order of Charles W. Gardiner, for the sum of $250.00, and signed F. H. Searls. Cannot give the date that I first saw this check.

The circumstances of signing that check are that in a conversation with Mr. Searls he asked me if I preferred to receive some cash or some stock and my reply was that I preferred to take the stock. The check was sent to me and I endorsed it and returned it to Mr. Searls and the stock was subsequently sent to me. It was stock in the Columbus Midway Oil Company. I think 750 shares. My remembrance is that this matter of the check and shares of stock in the Columbus Midway Oil Company came up by correspondence with Mr. Searls. Think this letter is probably destroyed. Had no further conversation with Searls concerning this check than I have stated. My understanding that this Columbus Midway stock issued to me was my interest as a locator under the power of attorney given to Mr. McMurtry.

(Check No. 149, for $250, dated May 6, 1911, payable to Charles W. Gardiner, similar in form to Defendant's Exhibit "T," read in evidence.) (See Plaintiff's Exhibit 50.)

I read the endorsement on the back or this check

(Deposition of Charles W. Gardiner.)

before I signed it. Don't think there was anything in the language that I didn't understand. Cannot remember that I had then been advised [195—88] that any locations at all had been made by Mr. McMurtry acting as the attorney in fact of myself and others in the State of California. That is something I cannot remember. Did not know at that time how many locations had been made under the mining laws by Mr. McMurtry as my attorney in fact in the State of California. Cannot swear that at any time I was advised as to the number of locations on the public domain that were made by Mr. McMurtry acting as my attorney in fact under this power of attorney. Cannot swear that I was informed of all this. Don't remember when I was advised of the number of locations upon which my name had been used, or how long it was after the signing of the power of attorney. Don't know whether or not I knew what my interests were in oil lands in California that had been located by Mr. McMurtry acting as my attorney in fact when I signed this check No. 149.

I read this ratification before signing it. Don't remember whether previous to that time I had been advised that any locations had been made by Mr. McMurtry on the public domain acting as my attorney.

Q. At the date you executed the ratification, did you know what lands were affected by the contract of August 4, 1910, between Mr. McMurtry and your attorney in fact and W. F. Herrin and others? A.

(Deposition of Charles W. Gardiner.)

I don't recall the circumstances. Don't remember whether the contract between L. B. McMurtry as my attorney in fact with W. F. Herrin, of date August 4, 1910, was exhibited to me at or prior to the time that I executed this ratification. You are asking me questions that I really cannot answer. I don't remember. Q. Did you, at the time you executed Exhibit 7, know anything about the contract between McMurtry and Herrin and others, of date August [196—89] 4, 1910, or of the lands which were affected by it? A. I wish I could answer your question, but I don't want to evade your question. Q. I don't think you do, Mr. Gardiner. A. But those are matters that are very hazy in my recollection, and I don't want to make a misstatement. Q. Did you, prior to the time that you executed Exhibit 7 on August 15, 1910, seek any information or advice as to the contents, purpose, or effect of the contract of date August 4, 1910, from any person whomsoever? A. Yes, through Mr. Searls. Q. What advice did Mr. Searls give you as to the purport and effect of the contract of August 4, 1910, or the lands that were affected by such contract, if he gave you any advice? A. You mean about ratifying the power of attorney; is that what you mean? Q. Yes. A. He advised me to do it; he advised me to ratify the former power of attorney when the papers were sent on to me. Q. What reason did Mr. Searls give you at that time, if any, why you should sign this ratification? A. To facilitate the work of Mr. McMurtry in the prem-

(Deposition of Charles W. Gardiner.)

ises. Q. Did you seek at that time, from Mr. Searls, any information with respect to the quantity of land that was affected by the contract between Mr. McMurtry and Herrin and others, of date August 4, 1910? A. Not that I remember of. The only correspondence or communication I had with any person during 1909 and 1910, with respect to these transactions was personal correspondence with Mr. Searls and "what may have been sent to me as reports from Mr. McMurtry's office." I have none of them now. They have been lost or destroyed.

Q. Those were received during the year 1909 and 1910, were they? A. I don't remember. Q. Well, did you receive any reports from Mr. McMurtry's office prior to the time you executed this check 149? A. I cannot answer that either; I have no [197—90] record of the matter and I cannot remember. Q. What information was there contained in those reports that you received from Mr. McMurtry's office? A. I have a remembrance of a report from his office, but the date I do not remember, telling of certain activities in the field, but that is as far as I can remember; I cannot remember the purpose of the report, except that they said something about what had been done.

At the time I signed my name on the back of check No. 149, dated May 6, 1911, I understood that McMurtry was making arrangements with some party to work, to prospect. As I understood it, they did not have enough funds to develop it as

(Deposition of Charles W. Gardiner.)

they wanted to, and they had to make arrangements with somebody else to do it for them.

Q. Who was it that didn't have any funds? A. The locators through the power of attorney to Mr. McMurtry. Had you at that time been called upon to contribute any money or means towards the development of any property located by the use of your name? A. No, sir. Q. At the time you signed check 149, did you expect to be called upon to contribute any funds towards the development of the property which had been located by the use of your name? A. That would depend upon conditions. Q. What was the exact state of your mind on that question? A. Why, we were trying to find something and if we found a good prospect, we would have to get some money to develop it and I would be expected to put in my share. If it was a good prospect, why, I would take it up in some way. Q. Did you have that expectation at any time after you signed this check 149? A. Yes. It was all according to the outcome of the location and the procedure. Q. Mr. Brann has produced the original stock-book of the Pacific Oil Lands Company, and I invite your attention to certificate [198—91] No. 30, which was issued on September 1, 1911, and shows that Charles W. Gardiner was entitled to 1000 shares of the capital stock of the Pacific Oil Lands Company; attached to the stub of that certificate is the following: "Received certificate No. 30 for 1000 shares of Pacific Oil Lands Company, dated September 11, 1911. Charles W.

(Deposition of Charles W. Gardiner.)

Gardiner." That is your signature to that receipe (showing witness)? A. Yes, sir. Q. Endorsed on the back of that certificate No. 30 is the following:

"For value received ——— hereby sell, assign and transfer unto Walter S. Brann ——— shares of capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint Walter S. B*t*ann the transferee of said stock on the books of the within named corporation, with full power of substitution in the premises.

Dated ——— 19—.

CHARLES W. GARDINER.

In the presence of

———————————."

Is that your signature to the bottom of that (showing witness)? A. Yes, sir. Q. Why was this certificate No. 30 for 1000 shares of stock issued to you? A. It was part of my share in the proceeds resulting from the location furthered by Mr. McMurtry. Q. At the time this certificate No. 30 was issued to you, or about that time, you had also received a certificate in the Columbus Midway Company? A. That is my remembrance. Q. Had you received any money growing out of these transactions at that time? A. Yes, sir. Q. How much money had you received? A. I don't know that I had received it at that time, but it may have been before and it may have been after, probably after I received — I don't know whether you would call it a [199—92] dividend

(Deposition of Charles W. Gardiner.)

or a division of twenty dollars. Q. Who tendered this certificate No. 30 in the Pacific Oil Lands Company to you? A. My remembrance is that it was sent to me by Mr. Searls. Q. Was that sent by letter? A. I believe so. Q. Have you the letter now? A. No, sir. Q. What has become of it? A. I believe it is destroyed. I did not keep those things. Q. What did Mr. Searls say, in substance, if you cannot give us the entire letter, as to why he was sending you this Pacific Oil Lands Company stock? A. I understood that under the workings of the power of attorney given to Mr. McMurtry, that I was to have my share, and this was part of the share of—that came out of the proceeds.

. . .

Q. I am asking you to give me the substance of what Searls said in that letter, and not what your idea was, but what Searls said in that letter? A. I don't remember just what he said, but I suppose it was, in substance, what I have just stated.

No, did not know at that time what the assets of the Pacific Oil Land Company were. Yes, I presume I had then heard of the contract dated August 4, 1910, and the supplemental contract dated August 6, 1910, between McMurtry and Herrin and others, affecting the lands in Kern County, upon which my name had been used as a locator. Cannot say that I then knew the terms and conditions of these contracts. I now understand that "there was an arrangement being made for part of the property to be developed by the company or a

(Deposition of Charles W. Gardiner.)

party whose name I cannot state, and that I was to have certain, expected certain returns from this procedure; was to receive my *pro rata* share among the locators. After expenses were paid and Mr. McMurtry was reimbursed for his services, I expected that the returns would be divided among the locators. Yes, I read the certificate No. [200—93] 30 when I received it. Don't know whether I knew at that time that the contract of August 4, 1910, and the supplemental contract of August 6, 1910, had been assigned by McMurtry as my attorney in fact to the Pacific Oil Lands Company. At the time I signed the check No. 149 on May 6, 1911, I believe I had heard of the contracts of August 4 and August 6, 1910, from Mr. Searls. Believe he advised me of the contents of those contracts and the purposes of making them. In a general way I was then familiar with those contracts, was acting under the advice of my friend Mr. Searls. Cannot say what advice he gave me as to the purpose of making those contracts. Yes, at the time certificate No. 30 came into my possession I believe I knew the number of shares of stock of the Pacific Oil Lands Company, but don't remember now what they were. Believe I must have then had a general idea as to what distribution had been made of the capital stock of the Pacific Oil Lands Company.

Q. Were you advised of the fact when you received your certificate of shares in the Pacific Oil Lands Company that on September 1, 1911, 999,997 shares of stock in the Pacific Oil Lands Company

(Deposition of Charles W. Gardiner.)

had been issued to L. B. McMurtry, that on the same date one share of stock had been issued to Harold H. Maundrell, and one share of stock issued the same date to Esther Harris, and one share on the same date issued to Walter S. Brann? A. I don't remember. Q. Were you advised when you received your share of stock that on September 2, 1911, L. B. McMurtry transferred to F. E. Harrison, 140,000 shares of the capital [201—94] stock of the Pacific Oil Lands Company? A. I don't remember. Q. Were you advised at the time that you received your certificate that on September 1, 1911, L. B. McMurtry transferred to E. W. Kay, 130,000 shares of the capital stock of the Pacific Oil Lands Company? A. I don't remember. Q. Were you advised at the same time that L. B. McMurtry transferred on September 1, 1911, to Fred B. Hughes, 90,000 shares of the capital stock of the Pacific Oil Lands Company? A. I don't remember. Q. Were you advised at the date you received and accepted your certificate No. 30, conveying to you or transferring to you 1,000 shares of stock in the Pacific Oil Company that each of the locators had also received a certificate, or that there had been issued to each of the locators a certificate transferring or conveying to them 1,000 shares of stock in the Pacific Oil Lands Company, and that the balance of the stock was held for the use and benefit of persons other than those whose names appeared as locators of the lands which were affected by the contracts of August 4th, and the

(Deposition of Charles W. Gardiner.)

supplemental contract of August 6th, 1910? A. I don't remember; I cannot answer that question.

Don't know how long I retained this certificate No. 30. It might be a couple of years. Sold it to Mr. Searls. He explained to me that, under the contract, or lease, or whatever it was, with the parties who were working certain territory, from them I might expect to receive certain moneys or divisions, or dividends, very uncertain, according to circumstances, and asked if I desired to continue under those conditions, or if I had rather take a lump sum and dispose of my interest. I preferred [202—95] the lump sum and disposed of them to Mr. Searls. He paid me $500.00 in cash for the stock. My remembrance is that I also surrendered the stock in the Columbus Midway. Cannot say that any of the lands which my name was used to locate were then held or claimed by the Columbus Midway Company. I believe they were. Cannot say what lands. Imagine it must have been during 1914 that I delivered this stock to Searls. Cannot say what other interest or interests I claimed in any of the lands located by the use of my name at that time. I was relying upon my friend Mr. Searls to look after my interests in those matters. Cannot say that I had any other evidence such as papers or writing or any verbal promise as to any interests in any of those lands.

Since I have surrendered this certificate and since I signed check 149, if there was anything I might do rightfully under those premises, I expected that

(Deposition of Charles W. Gardiner.)

Mr. McMurtry, acting under the power of attorney, would look after my interest.

Don't know that McMurtry has given me any money or promise or anything else since I surrendered this stock in the Pacific Oil Lands Company, nor do I remember that this company has given me any evidence or any interest since then. Don't believe now I have any interest in the Pacific Oil Lands Company, and don't remember that I have ever exercised the rights of a stockholder in the Pacific Oil Lands Company since I surrendered this certificate No. 30.

The details of the locations I don't know about.

Q. Did you know the state of development of those four placer mining claims (Minnesota, Massachusetts, New Jersey and Virginia) at the date of the surrender of Certificate No. 30? A. I don't believe I understood all of the conditions which you [203—96] stated. Q. What conditions did you know or understand at the time you surrendered certificate No. 30? A. What I have just stated a few questions ago, or a few answers ago. Q. You misunderstand me. I am asking you now exactly what you knew as to the state of development of those four placer mining claims at the date you surrendered certificate No. 30?

Mr. ANDREWS.—You mean of his own knowledge?

Mr. HALL.—Of his own knowledge, or by information from any person.

A. I don't believe I can answer that question. Q.

(Deposition of Charles W. Gardiner.)

Did you have any knowledge as to the state of development at that time? A. I have a remembrance of a report sent to me from Mr. McMurtry's office regarding the California locations, but whether that referred to the exact part as you just state or not, I don't remember. Q. I invite your attention to three sheets of typewriting matter bearing the heading, "Pacific Oil Lands Company." First Report to Stockholders." In pencil, "Jan. 1914," and over in the upper left-hand corner the initials "H. A." and "F. H." Is that the report you had at that time (showing witness)? A. I believe it is the same report that I received or a copy of it.

Think I had received and read a copy of this report prior to delivering this stock to Searls and understood its contents in a general way. While I had this stock certificate I think I received a check for $20.

Q. I invite your attention, Dr. Gardiner, to check No. 1193, dated San Francisco, January 8, 1914, drawn on the Bank of California, National Association. Pay to the order of Charles W. Gardiner, for the sum of Twenty Dollars, signed Pacific Oil Lands Company, F. E. Harrison, Secretary and Treasurer, L. B. McMurtry, Vice-President. On the back thereof is the following, among other [204—97] endorsements: "Pay to Batavia Clamp Company, Charles W. Gardiner." Is that your signature on the back of that check (showing witness)? A. Yes, sir. Q. Is that the check you referred to as the $20 you received? A. Yes, sir. Q. Why was that

(Deposition of Charles W. Gardiner.)

check given to you or paid to you? A. My share of certain of the proceeds from the development of the location. Q. Prior to the time you received that check, had you signed any papers with respect to the issuance or payment of any dividends by the Pacific Oil Lands Company? A. I probably did, but I don't remember. Yes, that is my signature on the paper purporting to have been signed by Charles W. Gardiner and acknowledged before D. B. McKenzie, a Notary Public, on August 13, 1913. As I remember, it came from McMurtry's office by mail. Presume there was a letter of transmittal. Cannot say. The letter has been destroyed.

Q. Can you tell me the contents of it? A. I was asked to grant permission of this action and make an affidavit before a notary, which I did, and return.

That is my signature on the paper which starts out "Pacific Oil Lands Company," and dated December 9, 1913. Received these two papers at different times. Received one in August. (The check and papers above referred to are as follows:)

San Francisco, 1–8, 1914. No. 1193

THE BANK OF CALIFORNIA
NATIONAL ASSOCIATION,
San Francisco.

Pay to the order of Chas. W. Gardiner—$20.00—Twenty and 00/100 Dollars.

PACIFIC OIL LANDS CO.

L. B. McMURTRY, Vice-Pres.

F. E. HARRISON, Secy. & Treas.

(Stamped in center) "The Bank of California Clearing House, paid Jan. 19, 1914." [205—98]

(Deposition of Charles W. Gardiner.)

(Back of check reads as follows:)

"Pay to Batavia Clamp Co. Chas. W. Gardiner. Pay BANK OF BATAVIA, Batavia, N. Y., or order, BATAVIA CLAMP CO.

Wells Fargo Nevada Nat'l Bank of San Francisco, Pay only through Clearing House, 16, Jan. 19 1914. Pay to the order of Any Bank or Banker, all prior endorsements guaranteed. BANK OF BATAVIA. 50–308 Batavia, N. Y. 50–308. H. T. Miller, Cashier.

Pay to the order Wells Fargo Nevada National Bank of San Francisco, Prior Endorsements Guaranteed, Jan. 17, 1914, California National Bank, Sacramento, California, Fred W. Kiesel, Cashier.

Pay to the order of Any Bank, Banker or Trust Co., All Prior Endorsements Guaranteed. Jan. 13, 1914, Columbia National Bank, Marine National Bank, Buffalo, N. Y."

(Consent last above referred to is similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman, and purports to have been signed by Chas. W. Gardiner, December 9, 1913.)

(Proxy last above referred to is similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman and purports to have been executed by Chas. W. Gardiner, August 13, 1913,) [206—99]

Q. At the time you surrendered certificate No. 30, had you been advised by anyone that on January 1, 1907, L. B. McMurtry, acting as attorney in fact under the power of attorney dated in December, 1903, had located in the names of P. F. Blackman, A. J. Rowley, Harry Sterling, W. Y. Husbands,

(Deposition of Charles W. Gardiner.)

D. G. Cunningham, John Ryan, B. M. O'Neill and James Clifford, the following placer mining locations, to wit:

"Ella," embracing the southeast corner of section 34;

"Searls," embracing the southeast corner of section 20;

"Illinois," embracing the southeast corner of section 22;

"Margaret," embracing the southeast corner of section 26; all in Township 31 South, range 23 East, in Kern County, California?

A. I don't remember. Q. At the time you surrendered certificate No. 30, had you been advised that L. B. McMurtry, acting as attorney in the fact for the eight persons whose names I have last given, entered into a contract with Mr. J. M. McLeod, for the development of the lands which I last described?

Q. The contract I refer to having been dated on or about October 8, 1908? A. I don't remember. Q. Was there any contractual—, A. Any what? Q. Any contractual or other relations which existed at any time prior to the surrendering of certificate No. 30, between yourself and your co-locators of the "Minnesota," "Massachusetts," "New Jersey" and "Virginia" claims, [207—100] and the eight persons whose names I have read, who were the locators upon the "Ella," the "Searls," the "Illinois," and the "Margaret" claims? A. cannot answer that question .I don't understand what you mean. Those particular points I don't remember about, even if I

(Deposition of Charles W. Gardiner.)

had any knowledge of them. Q. Do you now remember of any arrangement between yourself and any persons with respect to the lands embraced in these four claims, to wit, "Minnesota," "Massachusetts," "New Jersey," and "Virginia"? A. I don't remember any. First met J. M. McLeod when I was in San Francisco, in November and December, 1916. Do not know when I first heard of him. Mr. Searls might have told me, but further than that I have no remembrance. Did not know Mrs. J. M. McLeod or any of the members of the firm of Wheat, Wilson, McLeod & Gordon, or any of the officers of the Buick Oil Company, Associated Oil Company or Consolidated Mutual Oil Company. I was in San Francisco in November and December, 1916, at the request of Mr. Searls in reference to the McMurtry location proposition. He wired me and gave me a letter of introduction to Mr. Helm, and called at my office in Batavia. Said he was connected with the parties who were working or had purchased certain of the McMurtry locations. I don't know whether it was the Union or the Associated Oil. Helm was in consultation with me at Batavia only a few minutes. He said it might be necessary to ask me to go to San Francisco, and he wanted to know if I would go. It was to appear as a witness in certain litigation then pending. This was about September, 1916.

Q. Have you given us all the conversation that occurred? A. Why, no, but I will answer any question regarding it. Q. Well, I want you to be frank with me. I want to know what [208—101] this

(Deposition of Charles W. Gardiner.)

conversation was. Give me this conversation. Go on and give it all to me. A. As I understood it, there was some question as to the title to certain lands, and he wanted to see me and see that I was alive and wanted to know if I was one of the locators, and wanted to know if I would go out and appear in this certain litigation. Now, I think that was the purport of what was said. Q. Is that all of the substance of the conversation? A. That was the idea I have given you. Q. Was there any arrangement made at that time or at any subsequent time as to compensation for your going there? A. Yes. Q. What arrangement and when was it made? A. I don't know as to that. Mr. Searls wired me and I went.

There had consultation with Helm and Attorney Oscar Lawler. Did not appear as a witness then in any suit affecting any of the lands upon which I was a locator. No, I have not brought any action against L. B. McMurtry on account of the transactions growing out of this power of attorney dated December, 1907. Q. Do you contemplate any such action? A. Not now.

No, never received money or anything of value by reason of signing this power of attorney in December, 1911, since surrendering certificate No. 30. [209—102]

Cross-examination.

Yes, before being interviewed by Helm, had been interviewed by a Government agent concerning these locations. Was not asked to sign a statement and do not remember what he told me. I remem-

(Deposition of Charles W. Gardiner.)

ber very little about it, except that he called.

Q. At the time you entered into that contract of attorneyship, that is, making Mr. McMurtry your attorney in fact, had you ever told him, or anyone for him, that you would permit him to use your name to locate the lands for his benefit in California or elsewhere? A. No, sir. Q. The power of attorney granted by you to Mr. McMurtry was recorded in the public records of Kern County, California, in Book 10, at page 13, as is evidenced by the certificate of the County Recorder of that county, upon a certified copy handed me by Government's counsel at this time, and it appears that it was recorded—

Mr. ACH.—When, Mr. Hall?

Mr. HALL.—Is not the certificate on there?

Mr. ACH.—The certificate is on there; oh, yes. Q. On the 5th day of January, 1909, and it also appears that this power of attorney was recorded in San Benito County, California, in Volume II, of Miscellaneous Records, on April 13, 1908; prior to the last date which was January 5, 1909, had Mr. McMurtry or Mr. Searls or anybody asked you to give them a writing, acknowledging that whatever act that was done, by virtue of the power of attorney which you gave them relative to locating lands, should be, intended to be, for and on behalf of anybody else? A. No, sir. Q. Did Mr. McMurtry or Mr. Searls at any time advise you after January 1, 1909, at any time prior to your receiving the stock in the Pacific Oil Lands Company, that they wanted

(Deposition of Charles W. Gardiner.)

from you a secret or any transfer [210—103] of your interest in any locations that were made in your name in California? A. No, sir. Q. Was there ever any statement made to you by Searls, McMurtry or anybody else in behalf of McMurtry, or any other living person to the effect that they desired you to guard their interests, if any they had, in any locations made in your name in the event of your death? A. No, sir. Q. Did Mr. McMurtry or Mr. Searls, or anybody, at any time or at any place, in writing or verbally, make a request or a suggestion to you that you should not transfer any part of your or all of your interest in any locations that were made in your name to anybody else? A. No, sir. Q. Did you at any time yourself assign or transfer any interest in any location made in your name to anybody else? A. Except as set forth in that stock certificate. Q. I am not talking about the stock certificate. I am talking about transferring, about a transfer, conveyance or assignment of any part of your interest in any locations made for you by McMurtry? A. No, sir. Q. Did you ever execute any contract to the effect that you would assign, upon the happening of any contingency, any interest in any location that was made in your name by Mr. McMurtry, under this power of attorney? A. No, sir. Q. I show you the exhibit which Mr. Hall caused to be marked Government's Exhibit 7, which is a ratification of the power of attorney of December 21, and ratification of contract made on your behalf by McMurtry with W. F.

(Deposition of Charles W. Gardiner.)

Herrin, to which your signature is appended, and I ask you did you at any time prior to the execution of that ratification, sign any document of any kind or character yourself affecting any location which was made in your name by Mr. McMurtry? A. No, sir. Q. Did you ever have any conversation with Mr. McMurtry to the effect that he would be entitled to any of the lands that he located in your [211—104] name or to any interest in any of these lands in the event that he should locate any? A. No, sir. Q. Did you with Mr. Searls? A. No, sir. Between the time I signed the power of attorney and the disposed of the stock to Searls, did not meet or talk with McMurtry. He was not present to my knowledge when I signed the power of attorney. Neither McMurtry nor anyone for him, between the time of signing this power of attorney and the time I sold to Searls the stock asked me to recognize that McMurtry had any interest in the lands that were located or were to be located in my name.

Q. At the time you put your signature to the original power of attorney, did you have any intention of defrauding the Government of the United States? A. No, sir. Yes, it was my intention that McMurtry should make locations of oil lands in California, if he found any, by virtue of that power of attorney. When Searls asked me to sign this power of attorney he explained to me McMurtry's capabilities as an oil developer, and suggested that I become a locator in the premises, that he had con-

(Deposition of Charles W. Gardiner.)

fidence in him. Yes, he said he was to become a locator. I then understood that it took eight persons to locate a quarter section of land, or 160 acres. Cannot say that I then knew that the laws authorized every person to locate 20 acres for placer mining.

Q. Are you acquainted with any of the persons whose names I will now call off to you: Frank D. Taylor, Edwin L. Powell, J. F. Harder, S. H. Freeman. A. Yes. Do you mean I know them now or then? Q. Did you know them at the time that you signed the power of attorney? A. Go ahead. *A.* D. W. Darling, J W. Pentz. A. Yes. Q. C. W. Thorn? A. Yes, sir. Q. Herbert [212—105] Walker, W. A. Keenan, H. E. Bashore, C. Rupert Walker, R. P. Welch, Eugene Metz, F. H. Romaine, Jr., William Mahr, Samuel R. Banks, Frank B. Chapman, Julian P. W. Richmond, Fred S. Thorn, Harry B. Thorn, George W. Berry? A. Yes, I think that is his name. Q. George A. Meinecke, Francis E. Pratt, J. C. Thickens, William F. Christman, Mark W. Hatch, Hamlin E. Hatch, F. R. Bailey, Walter Wilson and J. E. Farrell. Now, the only person you knew was F. H. Searls? A. Yes, sir. Q. Now, did anybody tell you at any time that either or any of the persons whose names I have called off to you, or any persons that were interested in the locations made by Mr. McMurtry under the powers of attorney obtained here in New York, had transferred to him or any person of his selection, their interests in the lands which had been

(Deposition of Charles W. Gardiner.)

located or in the locations themselves? A. No, sir. Q. Was it ever suggested to you by anyone that either or any of those persons, or any of your associated locators, or any of the locators, used by Mr. McMurtry in the making of those locations had understood or agreed to transfer to Mr. McMurtry or any one of his selection, or to any corporation or any of the locations or any of the lands or any interest in any locations, or interest in any of the lands, referred to by me in my question? A. No, sir. Q. Was there ever any implied understanding on your part that Mr. McMurtry was to have any interest in any of the lands or in any of the locations made in your name? A. No, sir. Q. Did any of the individuals whose names I have called at any time assert to you that they had made any conveyance to Mr. McMurtry or anyone of his selection of their interest in the locations or in the lands, or any part thereof? A. No, sir. Q. Did either or any of those persons at any time assert to you, or in your presence state that they had executed any transfer to Mr. McMurtry, [213—106] or anyone of his selection at any time as to their interest in the locations or in the lands, or any part thereof. A. No, sir. Q. Mr. Gardiner, I am representing the Associated Oil Company, a corporation that through its nominees, W. F. Herrin and others, purchased from Mr. McMurtry, who represented himself to be your agent, and the agent of several others, some lands located by him, according to the records of Kern County, in your name; for those lands, to Mr.

(Deposition of Charles W. Gardiner.)

McMurtry, my clients paid in excess, as I understand the figures, of two millions of dollars. The Government of the United States, through these proceedings, are seeking to recover those lands from my clients, including the improvements my clients made upon the land, and in addition thereto, the value of all oil and gas taken from the land by my clients, upon the theory, among other things, that there was not a *bona fide* location of those lands, and that the locators were "dummy" locators, and that they had no substantial or real interest in the lands, but that they permitted themselves to be used for the purpose of enriching Mr. McMurtry, and permitted him to gain a greater part of the public domain than he as an individual was entitled to. Are you such a dummy, or were you such a dummy at that time? A. No, sir, I am not. Q. Before dealing with Mr. McMurtry as agent of yourself and these other colocators, it has appeared in evidence in some cases, and will appear in this case, I take it, that the Associated Oil Company [214—107] desired to know whether or not powers of attorney of the locators under which Mr. McMurtry was professing to act, had been rescinded, or were in full force and effect, or whether they had been modified, and also desired that those locators should confirm and ratify certain contracts which he, as agent of those locators, including yourself, had made with Mr. Herrin and others. The exhibit No. 7 you read at the request of Mr. Hall, did you not (showing witness)? A. Yes. sir.

(Deposition of Charles W. Gardiner.)

Q. Now, at the time of signing Government's Exhibit 7, did you read it? A. Yes, sir. I went to the office on Broadway, New York, about No. 248 or 290, where I found C. W. Thorn, who showed it to me and requested my signature to it. Was not told by Thorn or anybody at that time that I had no interest in the contracts or in the locations.

Q. Did Mr. Thorn at that time undertake to tell you in any way that he was a party to the contract with Herrin, or had ever seen it or read it, or had any copy of it in his possession, or anything of that kind? A. No, sir. Q. Had you ever seen a [215—108] copy of the contract that was made by McMurtry as your agent with W. F. Herrin and others? A. No, sir.

Nor had I seen the original or a copy of any contract that had been made by McMurtry with Herrin and other people on my behalf concerning the locations made in California. Had not received any money from McMurtry or anybody else at the time Thorn gave me this paper to sign.

Q. I see upon this check dated May 6, 1911, the endorsement of C. W. Thorn, which discloses the fact that after you endorsed this check it found its way into the hands of C. W. Thorn. Is it not a fact that after you received this check that Mr. Thorn proposed to sell you some Columbus Midway stock and sold it to you, sold you 750 shares of Columbus Midway stock, and that you paid him $250 for it with that check? A. Yes, sir. Q. Did Mr. Thorn tell you at that time what properties

(Deposition of Charles W. Gardiner.)

the Columbus Midway Company claimed to own, or tell you what the prospects were as to the success of that company? A. Mr. Thorn did not. Q. Who did, if anybody? A. Mr. Searls. Q. Mr. Searls? A. Yes, sir. Q. Was Mr. Searls here at that time? A. He was in the east at that time. Q. But the transaction of buying the stock, did that occur with you and Searls, or with you and Thorn? A. Between myself and Searls. Q. Do you know, then, how the signature or endorsement of Thorn came upon that certificate, or upon that check? A. I presume Mr. Searls passed it over to Mr. Thorn. Q. Do you know what position, if any, Mr. Thorn had with the Columbus Midway Oil Company? A. I understood he was selling stock for them. At the time I signed that ratification of McMurtry's I expected to get my proportional division of the proceeds, expecting him to be compensated for the services. There was no [216—109] written agreement, but it was understood "as much as I understand it."

Q. You are quite positive that it was never understood at any time, directly or indirectly, that he was to receive any indirectly, that he was to receive any interest in any of those lands, or any interest in any of these locations; is that a fact? A. Not to my knowledge. Q. You were never advised by Mr. McMurtry, were you, or Mr. Searls, of the receipt by Mr. McMurtry at the time that you signed this ratification of that power of attorney of any sum of money under those contracts, you were not told

(Deposition of Charles W. Gardiner.)

at the time you signed this contract or ratification that Mr. McMurtry had received any sum of money from Mr. Herrin, or the Associated Oil Company upon these contracts, had you? A. I don't remember. Q. Was Mr. Searls present at the time you signed the ratification? A. No, sir. Q. Just you and Mr. Thorn? A. No, sir; that was signed at Batavia, the ratification. Q. The ratification was signed at Batavia? A. I think so. Q. Well, then, I misunderstood you. A. The original was signed in New York City, the ratification was signed in Batavia. Q. Yes. Now, how did you get this ratification? A. It was mailed to me. Q. Then Mr. Searls was not present? A. No, sir. Q. And you don't remember what was in the letter. A. No, sir. Q. Then at the time did the letter state, or attempt to advise you that moneys had already been received or had not been received, upon these contracts, or that this thing was necessary because of the possibility of enforcing such a contract, or of the making of such a contract; do you remember anything about that? A. Why, I understood that the completion of the contract was pending the ratification of the locators. Q. I see. Now, then, were you ever told after that, or did you ever ascertain before you went to [217—110] San Francisco, if you ascertained it then, that Mr. McMurtry had been paid a considerable sum of money upon these contracts by the Associated Oil Company? A. I think that is set forth in the printed reports. Q. And before this printed report was made, have you any in-

(Deposition of Charles W. Gardiner.)

formation to the effect that he had received any considerable sum of money from this Associated Oil Company? A. I don't remember. When Searls bought this stock from me, he appeared to be buying it for himself; I was not sure. I was satisfied with his explanation and relied upon his statement as to the probable trouble of getting any more out of it. I believe he explained that the Government had withdrawn these lands and was claiming them.

Q. Yes; and is it not because of the fact that you understood you would be involved in litigation and that you did not know what it would cost you, or what trouble it was, that you concluded you had better take cash and quit? A. I did. Am not personally acquainted with Major E. A. Hoeppner. At the time I received my stock in the Pacific Oil Lands Company the only stock I knew anything about having been issued was my own. McMurtry did not consult me about the issue of the stock of this company, and I knew nothing about his intentions in that regard. Do not recall that Searls spoke to me about the incorporation of this company or the issuance of the stock. I had no knowledge as to what contracts or arrangements McMurtry made with anybody after the locations were made for the care, handling or preservation of the interests of the locators in these lands. I understood I had given him full right, power and authority to make any contracts he wanted for the development of any lands he located under the power of attorney and I had full confidence in him [218—

(Deposition of Charles W. Gardiner.)

111] and understood that it was the net results after expenditure or whatever money might be necessary that I was interested in. I expected to put up my share for the development, if the development proved satisfactory, if it was successful, if called upon.

Q. Yes, in other words, you mean if the lands were located and they looked good, you expected to put up your share to protect them; is that what you mean? A. Yes, sir. No, no one insured me against any expenditure, not that I know of. From 1908 to 1916, I lived at Batavia, and established my address at Chicago in November last year. After signing the power of attorney, saw Searls half a dozen times perhaps at Batavia. I was not in New York during that time. Have never been interested in any other located lands in California or elsewhere other than the lands located by McMurtry.

Redirect Examination.

Q. Did you ever learn that your name was used by Mr. McMurtry in making locations under this power of attorney in San Benito County, California?

A. Yes, sir. Q. When did you learn that? A. It is in that report. Q. Was that the first time you had known of that? A. I think it must have been. Don't know how many locations were made in my name in San Benito County. Don't remember that anyone ever told me.

Q. Do you know what became of your interest in the San Benito County lands?

(Deposition of Charles W. Gardiner.)

A. I believe they are still pending. Q. What interests do you [219—112] now claim in those San Benito County claims? A. Whatever interest I had, Mr. McMurtry will fully protect me. Q. What did Mr. Thorn say to you, if you can now remember, when he presented the ratification for your signature, Exhibit 7?

A. Mr. Thorn did not present it. Q. Who did present it? A. It came by mail, if I remember rightly. Q. I misunderstood you then when you said that you talked to Thorn about the ratification in some building here near the postoffice building in New York City? A. You must have misunderstood me.

Q. Upon your cross-examination you said there was a general understanding that McMurtry was to be compensated. With whom did you have that general understanding? A. Mr. Searls. Q. When was it that you had that understanding with Mr. Searls? A. I don't remember. Q. With reference to the time you executed the power of attorney, when was it? A. It was after that. Q. What did Mr. Searls say to you about it? A. I cannot remember what he said. I have set forth the purport of what he did say in my testimony. Q. What did you understand to be the compensation of Mr. McMurtry? A. It all depended upon circumstances. Q. What circumstances? A. The circumstances that might arise in the development of the location. Q. What circumstances do you refer to? A. Necessarily there must have been numerous expenses in

(Deposition of Charles W. Gardiner.)

furthering this location. I could not tell what they were. Q. Were you ever called upon to put up any money or means in [220—113] furthering these locations? A. No. Q. On your cross-examination, in answer to Mr. Ach, you said you were told that Mr. McMurtry was to finance the development work. Who told you that, and when? A. That was my general understanding in the beginning. Q. Was that told to you before or after you signed the power of attorney? A. My recollection is both. Q. By whom. A. By Mr. Searls. Q. Did you know at the time you signed the power of attorney how much you would have to put up for the development and annual assessment work upon each claim on which your name was used as a locator? A. I don't remember. Q. Did you know at that time what amount was required to be spent annually upon each of these claims upon which you were a locator? A. Not the exact amount; I knew in a general way. Q. Where did you get your information about that? A. I cannot tell you that, except that I know that they have to do a certain amount of work on any mining claim, general information. Q. If your name was located on January 1, 1909, on sixty locations, were you at that time prepared and willing to spend one-eighth of six thousand dollars each year to carry on the development work?

A. Yes. Q. At the time you signed the power of attorney, did you understand and were you advised that you might be obligated to put up the sum of

(Deposition of Richard B. Welch.)

$750 each year for annual assessment or development work on these claims? A. I don't remember. [221—114]

**Deposition of Richard B. Welch, for Plaintiff.**

RICHARD B. WELCH, called April 16, 1917, on behalf of the plaintiff, testified by deposition as follows:

I reside at West Haven, Connecticut. Clerk in the West Haven Water Company since November, 1910. In December 1907, resided in West Haven; was time clerk.

Q. The records of Kern County, California, discloses that there is therein recorded a power of attorney dated December 19, 1907 (substance of Exhibit 4 read to witness), are you the R. B. Welch who executed that instrument?

A. I signed several papers. I suppose I signed that.

Don't remember who requested me to sign it unless it was my brother-in-law, John B. Thickens.

Q. Did you have any conversaction with Mr. John B. Thickens about signing this power of attorney.

A. Not that I remember.

Q. Well, what, if anything, was said to you prior to the time you signed the power attorney, by Mr. Thickens? A. I cannot recall.

Q. Where were you when you signed it?

A. I cannot recall that.

Q. Were you in the city of New York?

A. I cannot say.

(Deposition of Richard B. Welch.)

Q. Did you appear before a notary public when you signed it? A. I cannot say that.

Q Why did you sign it?

A. I cannot recall why I signed it.

Q. You cannot recall that you did sign it?

A. I suppose that I did; I signed several papers, but I cannot recall that I signed this particular one.

Q. Why did you sign any papers in respect to this matter?

A. Why, I trusted to my brother-in-law and signed whatever he asked me to sign.

Q. What purpose did you have in mind when you signed these papers? A. Why, I don't know.

Q. Were you familiar with the laws of the United States at that time governing the location or the making of placer mining claims upon the [222—115] public domain of the United States?

A. I was not.

Q. At the time you signed this power of attorney, what was your intention with respect to exercising your rights under the laws of the United States, in taking up or locating upon the public domain?

A. I suppose I was locating a claim and that some day it would be worth some money.

Q. Where did you get any information which engendered that supposition in you?

A. From Mr. Thickens, I suppose, if I got any.

Q. When is the first incident with respect to this transaction that you can now definitely recall to mind?

A. You mean—will you repeat that question?

(Deposition of Richard B. Welch.)

Q. Do you know at this time how many claims you were located upon by reason of having signed this power of attorney? A. I do not.

Q. Did you ever know how many claims you were located upon? A. No, sir.

Q. Did you ever sign any papers that you can remember of in connection with these mining land transactions?

A. Some ratification papers, I believe, came to me and I signed them.

Q. Do you know what became of the power of attorney which you signed? A. I do not.

Q. Do you know what your attorney in fact, L. B. McMurtry, did under that power of attorney?

A. I do not.

Q. Were you ever asked to advance any money or means in the development of any mining claims on which your name was used as a locator?

A. I was not.

Q. At the time you signed the power of attorney, did you have any intention of advancing any money to be used in the development of or discovery of oil or other minerals upon any lands which might be located by the use of your name?

A. Why, if Mr. Thickens had said it was necessary for me to advance some money, I suppose I would.

Q. Did he ever say it was necessary for you to advance some money? A Not to my knowledge.

(Plaintiff's Exhibit with the deposition read in. It is a ratification similar in form to Plantiff's Ex-

(Deposition of Richard B. Welch.)

hibit 1 with the deposition of Frank B. Chapman and purports to have been executed by R. B. Welsh, August 19, 1910.) [223—116]

Q. I invite your attention, Mr. Welch, to a paper which has been marked Government's Exhibit 8; whose signature is that on there, the signature of R. B. Welch? A. That is my signature. Q. When did you sign that? A. Unless I was looking right at it, I should say on the 19th of August. Q. How did you come to sign that paper? A. I cannot tell you. Q. Do you know who presented it to you? A. I do not. Q. Can you, after reading Exhibit 8 recall now and relate to us the circumstances under which you signed that paper? A. I cannot. Q. Do you know how it came into your possession? A. I do not. Q. Do you know the stenographer or rather the Notary Carroll H. Brooks? A. Yes, sir. Where did he reside? A. I think he is in New Haven. Q. Do you remember of having gone before him and executing that paper? A. Yes, sir. Q. Was anyone with you when you executed that paper? A. I believe not. Q. Why did you execute that paper? A. It was sent to me by someone, and I suppose it was proper to sign it Q. At the time you signed it, did you read it? A. I should say so. Q. Did you know what it meant at that time? A. I should think I did. Q. Did you make any inquiry of anyone as to this contract between L. B. McMurtry and W. F. Herrin and others, of date August 4, 1910? A. I did not. Q. Did you ever, or had you seen that contract of August 4, at the time that you signed this

(Deposition of Richard B. Welch.)

paper? A. I had not. Q. Had you ever seen it? A No, sir. Q. At that time did you have any information whatever in regard to this contract of August 4th? A. Not that I can recall. Q. At the time you signed this ratification, did you know how many locations your name had been used in making? A. I did not. Q. Did you know at that time whether or not any public oil lands had been located by the use of your name? A. I suppose there had been. Q. Did you know where those lands were situated? A. I did not. Q. Did you know any thing about the state of development of those lands at that time? A. I cannot recall whether I did or not. Q. At the time you received [224—117] this ratification and executed it, was there any demand made upon you to advance any money or means to be employed in the development of any oil lands. A. Not that I recall. Q. Did you receive any compensation, money or anything of value for executing this paper? A. Not that I know of. Q. After the execution of the ratification, Exhibit 8 of this date, when [225—118] was the next time that you heard anything in regard to this oil land transaction? A. I cannot say definitely. Q. Did you have any conversation with Mr. McMurtry in regard to it? A. I did not. Q. Did you ever hear again from these oil land transactions after you executed the ratification? A. Why, I should say that I—from the company, you say? Q. Well, from anyone in regard to these transactions? A. In regard to that paper? Q. Well, yes, in regard to this paper, or in regard to any oil lands

(Deposition of Richard B. Welch.)

that had been located, or any transactions in regard to any oil lands that had been located, by the use of your name? A. Well, I heard I had other papers, but I cannot tell what they were. Q. I invite your attention to a check No. 163, dated, New York, September 11, 1911, drawn on the Second National Bank of the City of New York, made payable to the order of R. B. Welch, in the sum of $250, signed F. H. Searls on the face, and on the back of the check appears the following in typewritting: "Received from L. B. McMurtry, $250 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907."

Right underneath that typewriting which I have just read appears the name, "R. B. Welch," "C. W. Thorn," and then the name of "F. H. Searls." Did you ever see that check before (showing witness)? A. Yes, sir. Q. When did you see it? A. I cannot give you the date. Q. How was it presented to you? A. I do not recall. Q. Do you know the person who presented it, or was it presented by mail? A. I think that came by mail. Q. Was there a letter accompanying it? A. That I cannot say.

That is my signature on the back of this check. As I [226—119] recall, I sent it to John B. Thickens.

Q. Why did you do that? A. Well, I suppose, I should say it came from him in a letter. Q. Well,

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did you get any cash on that check? A. I did not.

I do not recall that I received any money or thing of value for endorsing that check. Should say I read the typewriting on the back before I signed it. Cannot recall the next transaction or occurrence after signing this check.

Q. I invite your attention to Certificate No. 12, certificate of stock No. 12 of the Pacific Oil Lands Company, which is in the original book, or the stock certificate book of the Pacific Oil Lands Company, as produced by Mr. Brann here, which recites on its face that there was issued to R. B. Welch, and that R. B. Welch is the owner of 1000 shares of the capital stock of the Pacific Oil Lands Company. Do you know whether or not you ever received that certificate? A. I think I did. Q. Well, when was it that you received it? A. I cannot give you the date. Q. From whom did you receive it? A. I think that was—I cannot tell for sure—but I think that was received from Mr. Thorn. Q. Which Mr. Thorn? A. I cannot tell you that. Q. Was he an older gentleman or a younger man? A. An older gentleman. Q. To refresh your memory, was that Mr. C. W. Thorn, or Mr. Frederick Thorn. A. I should say C. W. Q. Was the certificate handed to you personally, or transmitted by mail? A. I think it came by mail. Q. Was there any letter accompanying it? A. Possibly there was. Q. Do you know where that letter is now? A. I have some letters. Q. Where are they? A. At home.

Q. Do you remember the contents of that letter?

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A. I do not [227—120] Q. Do you know why this certificate of stock in the Pacific Oil Lands Company was sent to you? A. I should say for a check that I signed? *A.* I suppose so. Q. How long did you keep this certificate of stock No. 12? A. That I cannot say. Q. I notice attached to the stub of this certificate in the original book a receipt which reads as follows:

> "Received certificate No. 12 for 1000 shares of Pacific Oil Lands Company, dated September 14, 1911. R. B. Welch."

Is that your signature on that (showing witness)? A. Yes, sir, that is my signature on that. Q. Do you remember when you signed that receipt I have just read? A. I do not. Q. Do you know what you did with it after you signed it? A. I do not. Q. On the back of the certificate No. 12 I find the following: "For value received ——— hereby sell, assign, and transfer unto Walter S. Brann ——— shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint Walter S. Brann to transfer said stock on the books of the within named corporation, with full power of substitution in the premises." Dated March 16, 1914, and it is signed "R. B. Welch, in the presence of Clarence D. Horton." Is that your signature to that (showing witness)? A. Yes, sir. Q. Who was Mr. Horton; did you know him? A. Yes, sir. Q. Who was he? A. He is in the office with me. Q. What did you do with this certificate of stock after you signed it? A. That I cannot tell.

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Q. What did you receive, if [228—121] anything, when you signed this transfer of the certificate of stock? A. I cannot tell you that. Q. Did you receive any money at all? A. I do not remember. Q. On the back of it this purports to have been signed March 16, 1914; do you know whether or not that is the correct date on which you signed it? A. I should say so. Q. How long before you had signed it had you received this certificate? A. I don't remember. Q. At the time you signed the certificate, do you know how many claims had been located on the public domain in the State of California under the placer mining laws, upon which your name appears as a locator? A. I never knew. Q. Did you know at that time what interest you had, if any, in any oil claims that had been located by the use of your name? A. No. Q. The records of Kern County, California, show that on January 1, 1909, there were made the following placer mining locations on which the name R. B. Welch appears, together with the names of seven other persons, as locators, the claims being:

"Indiana," covering the northwest quarter of section 34;

"Maine," covering the northwest quarter of section 20;

"Rhode Island," covering the northwest quarter of sec. 22;

"Pennsylvania," covering the northwest quarter of sec. 26;

"Montana," covering the northwest quarter of

(Deposition of Richard B. Welch.)

section 32; all these being in township 31 south, range 23 east, and 19 other claims in Kern County, California, located at the same time.

Have you ever claimed any interest in any of the lands embraced in those locations? A. No, sir. Q. Do you now claim any interest in them? A. No. [229—122]

Cross-examination.

Married Mr. Thorn's sister June 16, 1906. Was then in the ticket office of the Boston & Albany Railroad, at Pittsfield, Massachusetts.

Q. In all of this matter concerning these oil land transactions you relied entirely upon what Mr. Thickens suggested to you, didn't you? A. Absolutely. Q. It is not true that Mr. Thickens applied to you to sign the power of attorney, and told you it was to locate lands in California, and that you might make a lot of money out of it? A. I should presume he told me that. Q. I notice you "presume" and "I think" a great deal in making your answers. Let me understand you. You now know that you signed a power of attorney and you signed a check and a ratification. Do you know that you got a check for $20, too, besides that? A. I should say that I did. Q. Up to the time of my asking you about it, had you entirely forgotten it? A. I had. Q. You had not mentioned it to Mr. Hall at all. Now, I show you a check dated January 8, 1914, bearing upon the back of it the signature "R. B. Welch"; is that your handwriting (showing witness)? A. That is. Q. Now, how did you get

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that check, do you remember? A. I think there was a letter that came from the Pacific Oil Lands Company, as I remember, and said that it was some distribution, and that was my share.

Mr. ACH.—Now, this check I offer in evidence, No. 1178. Q. Now, up to that time, up to the time of my interrogating [230—123] you about that, you had forgotten entirely that you had received a distribution by mail from the Pacific Oil Lands Company; is that true? Do you understand my question, after hesitation? A. I cannot understand quite about it. Q. Is it true that up to the time I showed you this check, this $20 check, with your signature on it, and while Mr. Hall was interrogating you, asking questions, that you forgot all about the Pacific Oil Lands Company, about their having sent you this check for $20 distribution? A. Why, I had forgotten it in here, but I had known about it before. Q. Before? A. Yes, sir. Q. You are a little bit nervous, are you? A. I am apt to be, I am sorry to say, yes. Q. Do you remember now signing any other papers at any time in this matter, or this transaction, besides the power of attorney, the ratification, and these two checks that have been shown to you? A. There was another paper attached to that check, which I signed, but I cannot remember all the papers I did sign. Q. You don't remember? A. No. Q. You don't remember whether that was a power of attorney or another location or acknowledgment of location, or anything of that kind, do you? A. I cannot tell you. Q.

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You don't know whether that was a consent to the formation of a corporation to hold these locations or not, do you? A. I cannot tell you. Q. You don't know anything about it? A. No, sir. Q. Now, I show you a piece of paper dated New Haven, August 14, 1913, and there seems to be a signature, R. B. Welch, [231—124] there. Look at it. Can you say whether C. W. Thorn witnessed your signature, if that is your signature,—is that your signature (showing witness)? A. Yes, that is my signature. Q. Do you know the notary public whose name is appended to that paper as having taken your acknowledgment? A. I did know him. Q. What is his name? A. Mr. Daggett. Q. Did you take it over to the Notary? A. Yes, sir. Q. Was Mr. Thorn over there in New Haven when you signed that paper? A. He was. Q. And you did talk with Mr. Thorn about it at that time? A. I should say I did. Q. And Mr. J. B. Thickens was not there at that time? A. He was not. Q. And when you signed that paper, did you give it back to Mr. Thorn, or did you mail it to San Francisco? A. I cannot tell you. Q. You cannot tell me? A. No, sir. Q. Well, now, read it, please? A. (Witness reads paper as requested.) Q. Have you read it? A. I have. Q. Do you now remember ever reading it before? A. I should say I did. Q. You will notice that that paper which you signed in August, 1913, gave Mr. McMurtry authority to appear at a stockholders' meeting of the Pacific Oil Lands Company, and to vote your stock; do you

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now remember that? A. Yes, sir. Q. Now then, you then knew that you had stock in that company, didn't you? A. I should say I did. Q. Didn't you also know that Mr. McMurtry had been your agent for the purpose of locating oil lands—and for other people—in California, before that? A. I should say so. Q. Are you friendly with your brother-in-law, J. B. Thickens? A. Yes, sir. Q. Did you see him frequently after you signed the power of attorney? A. That I could not say. Q. Don't you know how often you have seen your brother-in-law in the last ten years? A. No, I cannot tell you how many times. Q. No, but I want to know if you have seen him often? A. Not often, no. Q. Did he ever visit your house over there, or your home, in New Haven? A. He [232—125] has visited once. Q. Did you ever go over there to visit him, wherever he lives? A. Yes, sir. Q. When did you do it, in 1913? A. I cannot tell you. Q. Well, now, referring to this check which Mr. Hall had there a minute ago, made payable to you for $250, let me see whether I can refresh your memory in any way about it. Is it not true that Mr. Thorn brought you this check for $250 and at the same time called your attention to the fact that he was interested in some oil lands, or an oil company known as the Columbus Midway Oil Company, and suggested to you that it might be a good thing for you to buy 750 shares of this company's stock for $250—with that check—and didn't you get a certificate of stock in the Columbus Midway Company for 750 shares? A. I got

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a certificate for 750 shares of the Columbus Midway Oil Company. Q. And didn't you give him that check, after endorsing your name on it, in payment of that stock? A. I cannot tell you how I got the certificate. Q. What did you afterward do with that certificate for 750 shares of the Columbus Midway Oil Company's stock, didn't you afterward give it back to Mr. Thorn at the same time you gave him the stock in the Pacific Oil Lands Company? A. I gave the two certificates at the same time. Q. To Mr. Thorn? A. I cannot remember who I gave them to. Q. Is it not true in addition to that, when you gave up those two certificates, that you got $500 in money? A. I did. Q. And you had forgotten that when Mr. Hall asked you? A. I did not understand the question, the proposition. Q. You did get $500? A. I did. Q. Who gave it to you? A. I cannot tell you. Q. Well, at what place were you when you were given that $500 in money, Connecticut? A. In West Haven, I should say. Q. West Haven? A. Yes, sir. Q. What year was that, was it at the time you signed the back of that transfer in the stock book, in 1914? A. I cannot tell you. [233—126] Q. You cannot remember at all? A. No, sir. Q. Can you remember what was said to you at that time about it, why anybody was giving you $500? A. I suppose—Q. Can you remember what the party said who gave you the $500? A. No, I cannot. Q. You cannot remember? A. No, sir. Q. Do you remember anybody stating to you that the oil lands you were interested in, were

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involved in litigation, that the Government was trying to take them away, and here was your chance to get through with the thing for $500, or to take chances on the results; do you remember that being said to you by anybody? A. No, sir. Q. Have you ever been on the stand before in any case? A. No, not to my knowledge. Q. Have you a bad memory as a rule? A. Why, I cannot say as to that. Q. What? A. I don't know what you would call a bad memory. Q. Did you ever receive any other papers from the Oil Land Company in California that you remember of? A. I received my notification of the meeting. Q. Yes. A. And some paper that shows the condition of the Company. Q. Where is that? A. That is in West Haven.

Mr. ACH.—I offer in evidence this paper dated August 14, 1913, signed by the witness Welch, and witnessed in the presence of C. W. Thorn, and acknowledged before David Daggett, Notary Public, New Haven County, Connecticut.

(Defendants Exhibit "A" is similar in form to Plaintiff's Exhibit 5 with deposition of Frank B. Chapman.)

Q. I now show you a piece of paper comprising three sheets of typewriting, entitled "Pacific Oil Lands Company, First Report to Stockholders," dated January, 1914, in pencil, and in the upper left-hand corner the initials, "H. A." and "F. H." Kindly look at that paper and tell me whether you did not get that paper, or a copy of that paper with the $20 check. Read it over and take your time,

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unless you recognize it without reading it over (showing [234—127] witness). A. I should say I received that paper, a paper like that. Q. Now, Mr. Welch, have you been ill? A. No. Q. Your health good? A. Yes, sir. Q. You have not been ill at all? A. No, sir. Q. At any time? A. No, sir. Q. Been at work all the time steadily? A. Yes, sir. Q. This paper which you say you received with that $20 check—when you got this $20 check which I showed you there and you endorsed it, what did you do with it, did you cash it, or don't you remember? A. I don't remember. Q. You don't remember what you did with the money? A. No, sir. Q. Don't you remember what you did with the $500 Mr. Thorn gave you in money? A. Yes, sir. Q. Were you ever asked before by anybody what you did with the money? A. What money? Q. The $500. A. No, sir, not that I know of. Q. What? A. Not that I know of. Q. Did your wife ever get any part of it? A. Yes, sir. Q. What part of it did she get? A. She got it all. Q. Did you give her the $20 too? A. I may have. Q. Did you give her the shares of stock when you got those, too, did she take care of that for you, too? A. I cannot say. Q. When you gave Mr. Thorn that stock over in New Haven, or wherever you were, the two certificates, one of the Columbus and one of the other company, you got the $500, didn't you? A. I cannot say when I got that $500. Q. Didn't you get it when you gave up the stock to him? A. I cannot say that. Q. Do you know where you were when

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you got the money. A. I should say that I was in West Haven. Q. Was it in currency or gold? A. I should say it was a check. Q. What did you do with the check, give it to your wife? A. I don't know. Q. Or did somebody cash it for you, over there? A. I think it was cashed—I would not say cash—it was probably deposited. Q. In your name? A. In my name, yes, sir. Q. In the bank? A. In the bank. Q. Have you got a bank account now? A. Yes, sir. Q. How [235—128] about the $20 check, where did that go to? A. I should say it went in the same place. Q. Well, you understood when you got these moneys that it was because of your interest in these located lands out in California? A. I should say so. Q. You knew then that you had a claim then to some lands out in California? A. Yes, sir. Q. Now, in this report that you say you received when you got these checks, this $20 check, it was stated that Mr. McMurtry, as a last resort and fortunately, had made arrangements with the Associated Oil Campany, by which the Pacific Oil Lands Company, or rather by which the Associated Oil Company agreed to take over 1440 acres of land and to do all the work necessary to preserve the title to the land, and to pay McMurtry out of the oil produced from the land, if any, twenty cents per barrel. Now, as I read that to you, you having read it a little while ago in the presence of Mr. Hall and myself and the reporter, and others, other persons present, and having read it when you got it, do you now remember that you were in-

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formed in that paper that he had transferred to the Associated Oil Company 1,440 acres of land, and that the Associated Oil Company agreed to do all the work necessary in order to preserve the title to the land and pay out of the oil produced from the land, twenty cents per barrel, if they got any oil? A. I remember that; yes. Q. Didn't you understand at that time that that was referring to land which Mr. McMurtry had located in part in your name under the power of attorney that you had given at the request of Mr. Thickens, didn't you understand that? A. I don't know that I gave it any thought. Q. When you gave the power of attorney to Mr. Thickens, it is true, is it not, that he told you that this man, Mr. McMurtry, knew about oil lands in California? A. Yes, sir. Q. Is that so? A. Yes, sir. Q. And it is also true, is it not, that he told you at that time that Mr. [236—129] McMurtry as getting a number of people together, and he was helping to get a number of people together to locate oil lands in California for these people, if he should find any oil lands; is that not true? A. I cannot just remember what was said to me. Q. I am not asking you to remember just what was said to you, but did not Mr. Thickens imply to you that he was getting some people to locate lands in California? A. He did. Q. And didn't he say to you substantially—what is your name, Richard or Ralph, or Rudolph? A. Richard. Q. Richard—did he call you "Dick"? A. No. Q. Well, didn't he say, "Here, Dick, here is a chance to become a

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locator, and this man will locate in your name out there and you will have a chance to make some money out of it"? A. I got that impression. Q. And you were not trying to commit a fraud on the Government, were you? A. No, I was not. Q. You were not trying to help Mr. Thickens or Mr. McMurtry to perpetrate a fraud on the Government, were you? A. No, sir. Q. Did you think you were doing anything but what was your legal right? A. No. Q. You did not think you were going beyond your legal right, did you? A. No, sir. Q. Didn't your brother-in-law tell you that you had a right under the law to locate some land belonging to the Government for oil, and if you struck oil on it, you might make a big fortune out of it? A. I cannot remember what he said. Q. Didn't he say something about that to you? A. What? Q. Something about a chance of striking oil and making a lot of money out of it, and becoming a sort of "Coal-Oil-Tommy" or something of that kind? A. I cannot remember. Q. What? A. I cannot remember. Q. Well, he told you, didn't he, that he wanted you to sign this power for your own benefit so as to give you a chance? A. I should say so. Q. He didn't tell you to come and sign a paper so as to give another fellow a chance, did he? [237—130] A. No, sir. Q. He didn't tell you that he wanted you to sign a paper so as to give him, Thickens, a chance, did he? A. No, sir. Q. And he didn't ask you to sign a paper so as to give Mr. McMurtry a chance to make some money,

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did he? A. I should say not. Q. Now, in reading this paper over further, I see here that he stated that the making of this contract with the associated was the only thing to do to save what we now have; that there were many people whom Mr. McMurtry felt should be beneficiaries of this agreement which he had made; that there were the locators; that there were the people who had given money to aid in carrying on the work of holding the lands until they were sold; there were those who had worked and watched night and day to see that hostile parties had not jumped the lands and taken them away; there were men who had labored on the lands doing assessment work; and finally there was Mr. McMurtry himself, and Mr. Hoeppner, the first of whom had conceived and carried out the plan of getting and holding the lands, and the latter of whom had done yeoman's work in keeping off trespassers and jumpers. Do you now remember reading that at that time? A. I remember; yes. Q. And you did know that Mr. McMurtry had located lands and had a lot of trouble in holding those lands against fellows that were trying to take it away from him, when you read that paper? A. I should say I understand it that way. Q. You understand it that way now as I read it? A. Yes, sir. Q. And you understand what the effect of those words are, don't you? A. Yes, sir. Q. And you understand from my reading that Mr. McMurtry had a lot of trouble about these lands, and this company was corresponding with you in January, 1914, when they

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sent you some money as a dividend; is that not true? A. I remember receiving the dividend. Q. Well you remember now that they were telling you what this dividend came from and why [238—131] you were getting a dividend, don't you, in this report? A. I should say so. Q. Now, this thing reads further along as follows: "In order that all of these people should share in this contract with the Associated Oil Company, the Pacific Oil Lands Company was formed August 11, 1911, and its stock was divided up among the various people above named, or provision made to reimburse such as were given no stock." Now, as I read that, do you understand it? A. I don't quite understand it, no. Q. Well, I will read it again, and will read it very deliberately and slowly: "In order that all of these people should share in this contract with the Associated Oil Company, the Pacific Oil Lands Company was formed in August, 1911, and its stock was divided up among the various people above named, or provision made to reimburse such as were given no stock." Now, you understand when he says that "all these people" he means the locators and the men who helped them protect the lands, Mr. McMurtry doing his work, and Mr. Hoeppner, who had done yeoman's service—the men had done the assessment work—you remember my reading all that a minute ago, don't you? A. Yes, sir. Q. Do you understand it now? A. I think so. Q. Yes. Now, he says: "In order that all these people should share in this contract with the Associated Oil Com-

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pany"—you remember my reading about his saying that he had fortunately made a contract with the Associated Oil Company so that they would agree to protect these 1440 acres; do you remember my reading that? A. Yes, sir. [239—132]

Q. And you remember your reading it in this contract a few minutes ago—not the contract—in this report a few minutes ago when I asked you to read the report here, just a few minutes ago; can you remember reading it? A. I cannot say that I read it all; I just glanced at it. Q. Well, now, this paper proceeds to say, in order that all of these people should share in this contract with the Associated Oil Company, this Pacific Oil Lands Company in which you had stock was formed in August, 1911, and this stock was divided among the people above named, or provision was made to reimburse those who were given no stock. To this company McMurtry transferred the contract with the Associated Oil Company, or rather to the Associated— Mr. Hall.—With the Associated? Mr. ACH.—Yes. Q. "Covering 1440 acres of land, and 640 acres of land in San Benito County, and the stock of this company went to those who had contributed in any way in getting and holding the land." Do you understand that language as I read it to you? A. I think so. Q. Now, when you looked at it a little while ago did you see that provision in the report? A. I don't know that I read it at all. Q. Yes. When you got it you read it and you read everything that was in this, didn't you? A. I should say perhaps I did. Q. And you

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understood it then, didn't you? A. I thought I understood it. Q. Well, now, you understood then from this paper that you were one of the locators; that he had located these lands; that he had made a contract with the Associated Oil Company whereby they did all the work that the law required in order to protect the lands; that they had a lot of trouble about the lands, keeping off jumpers; that Mr. Hoeppner had helped a lot; that the assessment work had been done and that there had been prior locators; that he thought it was only fair and equitable [240—133] that everybody should participate in that contract, and therefore he organized this corporation and divided the stock up of that corporation to these various people, yourself included, as a locator. Didn't you understand that? A. I should say so. Q. And didn't you get a dividend right with that report? A. I got a dividend, but I don't know whether it was that one or not. Q. I understood you to say that the report came with your check for $20.00; do you remember that now? A. I can't remember what came with the check. Q. I see. Now, see if I cannot refresh your memory a little more. I am showing you a paper now which reads like this: "PACIFIC OIL LANDS COMPANY: I, the undersigned, stockholder of the Pacific Oil Lands Company, a California corporation, with its principal place of business in the City and County of San Francisco, State of California, do hereby consent that the Board of Directors of said corporation may set aside $20,000 of the cash assets of said corporation

(Deposition of Richard B. Welch.)

to be declared as a dividend upon the stock of said corporation, and such other sums from time to time as in their discretion may seem advisable; and I hereby release the Board of Directors of said corporation from all liability of every kind and character in so doing." Now, please look at it and see whether that is your signature. A. That is my signature, yes, sir. Q. Now, did you hear me read that paper to you just now? A. Yes, sir. Q. Did you understand it as I read it to you? The witness hesitates and appears to be reading the paper again, and I ask him again—I ask you again—did you read the paper again yourself? A. I have not read it all, no. Q. will you please go on and read it again yourself, and say, "I am through," after you have read it. Read it slowly, calmly and carefully, please. A. (Witness reads paper as requested.) Q. Have you read it now? A. Yes, sir. Q. Now, do you understand it? A. I think I do. [241—134]

Q. (Question read.) A. I cannot say that I did. Q. Now, when you signed this power of attorney, you did not give your brother-in-law or Mr. McMurtry or anybody else any writing that they could use your name to get lands from the United States Government for their benefit, did you? A. I don't think I did.

Cannot remember signing any contract or agreement to turn over any lands that were given me by virtue of that power of attorney to McMurtry, Thickens or anybody else; nor can I remember anyone asking me to.

(Deposition of Richard B. Welch.)

(Defendant's Exhibit "B" offered and read in evidence and is similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman, and dated December 12, 1913.)

Q. This writing that you got, the report from the Pacific Oil Lands Company, when you got that dividend, also said that they had changed the agreement with the Associated Oil Company, and by the new agreement the Associated Oil Company agreed to pay to the Pacific Oil Lands Company, in which you held this stock, $1,375,000, in cash, down, it says and the balance in monthly installments of $20,000 a month. Do you remember reading those big figures in this report? A. Yes, sir. Q. What? A. Yes, sir. Q. And do you [242—135] remember that it went on and said: "This contract for the first time gave the company an assured definite amount available, and left only one opening by which future payments shall be defeated. That is, if the Government shall take away the land sold, that payments under the contract stop from the date of such taking away, and there is no further obligation on the part of the Associated Oil Company, to make any more payments." Do you remember that now, that that was all underscored (showing witness)? A. Yes, I see. Q. And do you remember that Mr. McMurtry, or whoever wrote this report, was calling the attention of the stockholders of the company that they had received this large sum of money on this contract, and there was $20,000 of payments to come in every month, but there was danger that the Government of the United

(Deposition of Richard B. Welch.)

States might succeed in taking the land away from everybody, and then the payments would stop. Now, don't you remember that now? A. I should say that I did. Q. And you knew when you read that, if the Government or anyone should take that land away, it was supposed to affect you and your rights, didn't you? A. I should think I did. Q. This paper also said, that is, this report of January, 1914, "In this connection it is well to state that up to the present time no title to any of the lands sold has been obtained from the Government." Do you understand that language, that no title to any of these lands that were located and sold, by them to the Associated Oil Company, had ever been gotten from the Government; do you understand that? A. I don't think so. Q. Did you understand it then? A. As I said, I read the paper and I did not give it any thought. Q. But you understood what you read? A. I think so. Q. And you understand English? A. Yes, sir. Q. And this paper was plain to you, you didn't have to go and ask anybody what it meant, did you? A. No. Q. Did you ever read it over with your wife? [243—136]

A. I don't remember. Q. Now, when the man came with the $500 check is it not true that he told you that there was some question being raised by the Government about these lands, and that you could have $500 in cash for your interest, or you could hold your interest and take a gamble upon the outcome of the claims of the Government; is that not true? A. I cannot remember. Q. You won't testify

(Deposition of Richard B. Welch.)

that that did not occur, will you? A. I cannot remember whether it did or did not. Q. Did you have any talk with your brother-in-law, Mr. Thickens, about whether you should sell this stock or not, or do you remember whether you did or that you did not? A. I do not. Q. You may have and not remember it; is that the idea? A. I may have. Q. Did you ever debate it—do you know the meaning of the word "debate"—to debate it? A. Yes, sir. Q. Did you ever debate it with your wife before selling the stock for $500? A. I don't think I did. Q. Let me ask you: Did you ever own any other stock in any other corporation besides this in the Oil Lands Company? A. No, sir. Q. Before you bought the stock from Mr. Thorn in the Columbus Midway Company, with the first $250 you got out of these locations, did you advise with your brother-in-law, Mr. Thickens, as to whether you should buy that stock or not? A. No. Q. Did you rely entirely on Mr. Thorn and what he said about your buying the stock; do you understand my question? A. I should say that I did. Q. Did you at the time you bought the stock in the Columbus Midway Company, from Mr. Thorn, advise or consult with your wife as to whether you should buy that stock or not? A. No, I did not. Q. Did you act upon your own judgment in the matter? A. I should say so. Q. Well, do you remember what hopes of enhancement in value of the stock or advance in the value of the stock, or in making money by buying the stock, that Mr. Thorn held out to you, when he got that $250 check from you?

(Deposition of Richard B. Welch.)

A. I do not. Q. He did tell you something, didn't he? A. I don't know what he did tell me. [244—137] Well, you were not making Thorn a present of that $250, were you? A. I don't think I was. Q. You thought you were getting something worth as much as or more than $250, from what he said, is that true? A. I should think so. Q. You told Mr. Hall, as I understood you, that you did not know where the locations were made, which means that you did not know where the land was which is mentioned in this report, or in these proceedings that he has been asking you about— Now, it is true, is it not, that you knew these lands were in California. A. I knew they were in California. Might have asked Thickens about this matter after signing the power of attorney. Should say that I required of him in some way about it. I should say he told me that it was being taken care of by Mr. McMurtry. Don't remember that I advised Thickens as to whether I should sign any of these papers. No, did not give this $520 back to McMurtry or Thorn.

Redirect Examination.

This $500 which I received when I surrendered the Pacific Oil Lands Company's certificate of stock and the stock in the Columbus Midway Oil Company, and the $20 dividend check is the only money or thing of value that I received in connection with this entire transaction. Am still unable to recall where I signed the original power of attorney. Cannot recall having appeared before the Notary Public or Commissioner of Deeds in the City of New York and

(Deposition of Richard B. Welch.)

signing these papers. Cannot say where I was in December, 1907. Cannot remember having been in New York City during that month. [245—138]

**Deposition of Julian P. W. Richmond, for Plaintiff.**

JULIAN P. W. RICHMOND, a witness called April 18, 1917, on behalf of the plaintiff, testified by deposition as follows:

Am a civil engineer and reside at Yonkers, New York. Am employed in New York City and have been for over ten years. Was employed there in December, 1907, as assistant engineer for the city, as I am now. Never lived in or visited California; nor have I ever been engaged in actual mining.

Very likely I signed the power of attorney (Plaintiff's Exhibit 5), but I don't remember it distinctly. Don't recall knowing John G. McTigue, Notary Public, but remember having appeared before a notary to execute an instrument. The connecting link between myself and that document is a Mr. C. W. Thorn, who was a comparatively old acquaintance of mine; he was indebted to me for money loans and other reasons, and interested me in this location. Don't remember what he said. My impression of his meaning was that by enabling me to become a collector of such claim he could repay. He made no direct reference that my participation in this would be a benefit to him, and in that way he could repay me; the inference was that he was doing me a good turn, that he was leading me to a profitable investment. I had heard of McMurtry

(Deposition of Julian P. W. Richmond.)

on many occasions previous to this execution, to the best of my recollection. Do not know that I met Mr. McMurtry before executing the power of attorney. Believe I was interested in a corporation with which McMurtry and Thorn were connected. Don't remember its name, but can guess. My best guess or impression is that it was the Empire Oil Company. Don't remember that I had more than one conversation with Thorn about executing this power of attorney. Don't remember whose office I was then in, but the place was at Fulton Street and Broadway. There were present some other acquaintances of Thorn, his son, I believe, and probably Mr. Freeman, and others whom I have forgotten. [246—139] Don't recall what was said to me at the time by either Mr. Thorn or the notary public —nothing that made an impression upon me. After signing it Mr. Thorn kept in touch with me at irregular intervals concerning the transaction. In a general way, he told me that the location of wells was being prosecuted upon this property and that the outlook was rosy for actual returns.

I don't remember that anything was said at the time I signed as to any financial liability I would incur. I cross-examined or questioned Mr. Thorn regarding certain features of this power of attorney. One of those was whether my giving the power of attorney to anyone regarding my privilege of locating mines or similar properties would be estopped in regard to further locations. The question was whether this particular document pre-

(Deposition of Julian P. W. Richmond.)

cluded me from locating at other times, or in other places; in other words, I wanted to know how much this particular power of attorney bound me, and I was told that it bound me, as near as I can recall, only for the State of California, and I think it only bound me for a term of years, and that was the impression I received from Mr. Thorn. What I assumed I knew was that if development should take place, similar to all mining claims, that one or more of the locators who established himself upon the property, plotted it, surveyed it, recorded a deed for it, and spending a certain amount of labor and probably money upon it, within stated periods, the regular routine, which I seemed to always know of. Don't remember that anything was said at the time I executed the power of attorney or before as to what would be my liability, from a financial standpoint, by reason of having executed it.

(Plaintiff's Exhibit 9, which is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman, and purporting to have been executed by Julian P. W. Richmond August 16, 1910, offered in evidence.) [247—140]

To the best of my recollection this document (Plaintiff's Exhibit 9) was executed by me at the suggestion of Mr. Thorn. My recollection of events at that time remains very vague. I would rather not be pinned down to this document, and make my answers regarding dealings with Mr. Thorn in general. I signed it then because I had previously

(Deposition of Julian P. W. Richmond.)

signed a power of attorney, and I understood that this document was a ratification of the previous power of attorney. Got this understanding from Mr. Thorn's statement and my interpretation of this instrument (Exhibit 9). I certainly read it. I cannot answer that question fully, as to whether I was then advised as to the contents, purport and effect of the contract made by L. B. McMurtry as my attorney in fact, with W. F. Herrin and others, dated August 4, 1910. Don't remember whether this contract was exhibited to me at any time. I believe at the time I signed this paper (Exhibit 9) I was a *bona fide* locator in the State of California for some oil claims. It was my impression that my power of attorney for locating claims was limited by law to a single claim and that I had completely exercised those powers in the original power of attorney executed to Mr. McMurtry. Q. At the time you executed Exhibit No. 9, you had this understanding to which you refer in your last answer, did you not? A. It was a mental understanding with myself. Q. And you had it at the time you executed Exhibit No. 9? A. I don't remember, I don't remember. Q. At the time you executed Exhibit No. 9, the ratification, what did you understand was the extent or area of mining claims? A. I don't remember any dimensions. I understand that those claims are, are a matter, that the size of those claims are regulated, and this was a standard claim. Q. How many claims, if any, were you interested in—were you claiming an interest in? A. At the

(Deposition of Julian P. W. Richmond.)

time I executed— Q. Exhibit No. 9? A. I don't remember. Q. Did you know at that [248—141] time how many claims you claimed to be a locator upon? A. I was satisfied in my own mind that this was a ratification of the original power of attorney, disposing of the original claim. Mr. HALL.—Read the question again to the witness, and I ask him to note it carefully, and to give an answer to it. (Question read.) A. I then believed that I did know. Q. Do you know now how many claims you then thought that you were located on? A. Repeat that, please. (Question read.) A. The matter has passed my mind. Q. You have used the word or words, "one claim"; what did you mean by that? A. I mean the legal limitation which a locator is bound by. Q. Did you know at the time you executed Exhibit No. 9 how many location notices of association placer mining claims your name appeared on in the State of California as an associate locator? A. I did not inquire. Q. Did you know how many association locations your name appeared on? A. I don't remember. Q. At the time you signed Exhibit No. 9, did you receive anything of value for signing it? A. I don't remember. Q. What was the next paper or instrument that you signed, after you executed Exhibit No. 9? A. I don't remember. Don't remember whether I had any stock in the Empire Oil and Development Company at that time. Don't remember that I ever had any stock in that company. Q. Had you acquired it

(Deposition of Julian P. W. Richmond.)

before or after you executed the original power of attorney?

The WITNESS.—Can I say anything apart from the record?

Mr. ACH.—Say anything you want.

The WITNESS.—Gentlemen, it is simply this: That I have not been in touch with any one of you, no one in this room have I seen before Monday, and I am entirely at sea as to these things; you have to go over this thing slowly and have a little patience, and you will have to refresh my memory on each one of these things. Now, you speak of a power I made and acknowledged prior— Q. Well, [249—142] prior to the time—I will just change that: Had Mr. C. W. Thorn, or Mr. L. B. McMurtry, or Mr. F. H. Searls sold you any stock in any oil company prior to the time you executed the power of attorney in December, 1907? A. Mr. Thorn has pledged with me on several occasions many shares of oil stock. Q. Have you purchased outright and were you the owner, either by purchase or by condemnation of pledge, any stock? A. Please limit these stocks to certain ones which have to do with your question. There are many oil stocks in the market. Q. Did you have any stock in your possession of which you were the owner in the Empire Oil & Development Company prior to the time you executed the power of attorney in December, 1907? A. Please go back and tell me which is the Empire Oil & Development Company, who are its officers or something more definite about that com-

(Deposition of Julian P. W. Richmond.)

pany; I am mixed up with these different companies. Q. As near as I understand the situation, it was a company of which Mr. L. B. McMurtry was either the president or some other officer, and the stock of which was being sold in New York City in 1907— A. Previous— Q. By Mr. C. W. Thorn. A. Previous to this power of attorney? Q. Yes. A. Previous to any one of the documents here mentioned? Q. Yes, previous to the execution of any of the documents. A. I don't remember purchasing any such stock. Nor had any such been presented to me. I hold at present certificates which are probably the Empire Oil & Development Company, stock certificates of the Empire Oil & Development Company. Q. In what way and for what purpose do you hold them? A. As collateral to a loan to C. W. Thorn.

Q. I invite your attention now, Mr. Richmond, to a check, No. 172, dated New York, September 11, 1911, drawn by F. H. Searls on the Second National Bank of the City of New York, made payable to your order, Julian P. W. Richmond, for the sum of $250, and on the [250—143] back thereof is the following, in typewriting:

> "Received from L. B. McMurtry, $250.00 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 21st day of December, 1907."

(Deposition of Julian P. W. Richmond.)

And just below that is signed the name, "Julian P. W. Richmond," and below that is the name of "C. W. Thorn," and then below that is the name of "F. H. Searls," and then below that is a rubber stamp, which is immaterial, a bank rubber stamp.

C. W. Thorn presented it to me. Very likely I read the typewriting on the back before signing it. I received $250.00 United States currency on that check from C. W. Thorn, and there were delivered to me at that time stock certificates; don't remember in what company. Don't remember whether it was the Empire Oil & Development Company or the Columbus Midway Oil Company.

Q. What consideration, if any, did you pay for the stock certificate that was delivered to you at the time you signed your name on the back of check No. 172? A. If my memory were properly revised I could answer this question easily, but I don't remember the names nor other details of the oil stock certificates involved in this questioning. Q. Did you take the $250 that Mr. Thorn paid you in currency when you signed your name on the back of check 172 and give it to him or to any other person, in payment for the stock certificate which was delivered to you at the time you signed check 172? A. I don't remember. Q. What did you pay, if anything, for the stock certificate which was delivered to you at the time you signed check 172? A. I don't remember. Q. Did you pay anything at all? A. I don't remember. Q. Why was check 172 given to you to sign? A. The check was not

(Deposition of Julian P. W. Richmond.)

given to me to sign. Q. Why was it given to you? A. I don't remember. Q. Who presented it to you? [251—144] A. Mr. Thorn brought the check to me.

Don't remember that he said anything to me. Being out of touch with this matter for nearly six years, absolutely out of touch with this particular check for six years, I cannot remember anything very definite regarding it. What I can tell you in this particular definite matter is vague. I understood—I understand—according to that—I understand now that my impression at that time was that Mr. McMurtry was consummating a deal for which it would be necessary to have control of the interest of his colocators, or the interest of the locators of the claim in which I was a locator.

Q. At the time you signed that check, did you know how many claims your name had been used in locating? A. That question does not mean anything to me. Mr. HALL.—Will you please repeat the question to him, Mr. Stenographer? Q. (Question read.) A. I cannot answer that. Q. At the time you signed check 172 did you know how many placer mining claims had been located in the State of California by the use of your name? A. I did not know by number. Q. Do you know by description or any other way? A. Not by technical description, or by any other technical way. Q. By any way other than a technical way or technical description, do you know? A. I was then impressed with the fact that I had located such claims. Q.

(Deposition of Julian P. W. Richmond.)

How many? A. I had previously stated that I thought that there was a legal limitation to the size and number of such claims located by any individual. And that impression still stood. Q. At the time you signed check 172, how many claims did you think that you had located? A. I did not think at that time. Q. (Question read.) A. Particularly upon the number of claims. Q. Hal you any information or idea as to the number of claims upon which your name had been used in making locations? At the [252—145] time you signed check 172? A. I had a general idea that I had located as large and as important a claim as I legally could. Q. What was your idea as to the extent and area of the claim which you then located? A. My idea was that it was a maximum claim allowed under the law. Q. What was the source of this information as to the extent and area of the claim which you had located? A. My own general knowledge. Mr. HALL.—Read the question again. I insist it is not responsive. A. I will go on record as saying that I did not bother about the size of the claim. A claim was a claim to me. Don't remember that any explanation was made or anything said to me about the typewriting on the back of check 172. Very likely I read it. Don't remember what I thought I was doing when I signed that typewriting on the back of that check.

Q. Did you know at that time of what all your right, title and interest in and to all lands located by said L. B. McMurtry on your behalf in Kern

(Deposition of Julian P. W. Richmond.)

County, California, consisted? A. Outside of its money value, I did not know. Q. What did you know its money value to be? A. I believed its money value to be very small. Q. Can you fix that in dollars and cents for us? A. My answer is that I had had these various oil companies investigated and had come to the conclusion that their stocks were nearly worthless, so that when Mr. Thorn offered me payment for a stock certificate of a company whose name I don't remember, it is very likely that I accepted this check and another stock certificate for the transfer of a stock certificate in my name for shares in a company whose name I don't remember. Q. Was this check No. 172 given to you in payment of the transfer from you to Mr. Thorn of a stock certificate in some oil company, or was it given to you for the purpose recited by the typewriting on the back of the check? A. The answer is, [253—146] probably a combination of those purposes. Q. At the time you received check 172, was there anything said to you by any person with respect to any payments that would be made to you in the future by reason of your having executed the power of attorney in December, 1907? A. I don't remember. Q. I invite your attention now, Mr. Richmond, to certificate No. 28, found in the original stock book of the Pacific Oil Lands Company, which discloses that on September 1, 1911, there was delivered, rather there was issued to Julian P. S. Richmond, certificate No. 28 for 1,000 shares of the capital stock of the Pacific Oil

(Deposition of Julian P. W. Richmond.)

Lands Company. I also invite your attention to a receipt attached to the stub of the certificate No. 28, which receipt reads as follows: "Received certificate 28 for 1,000 shares of Pacific Oil Lands Company stock, dated September 12, 1911." That is signed "Julian P. W. Richmond." Is that your signature on that receipt (showing witness)? A. That is my signature. Q. When did you receive certificate No. 28? A. It is most probable that I received certificate 28, of record here, September 12, 1911.

Don't know who delivered certificate No. 28 to me, or whether it was delivered by some person or by mail. I knew at the time why it was delivered to me, but don't remember now. If this certificate is a certain certificate which I have in mind, it was delivered to me because I was one of the colocators of a certain claim. Don't know what claim it was or where, only that it was in California. Don't remember any of the circumstances attending its delivery to me, or how long I kept it. That is my signature on the back of the certificate. Don't remember when I signed that. The occasion for signing was that I received other good and valuable consideration therefor. Don't remember what or from whom I received it. The fact that "Walter S. Brann" appears to be the transferee does [254—147] not recall to my mind from whom I received the consideration. After endorsing the certificate I must have given it in exchange for something. Don't know to whom. I believe I gave it in exchange for other stock. Don't remember the next paper I signed.

(Deposition of Julian P. W. Richmond.)

(Plaintiff's Exhibit 10 read in evidence. It is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman, and purports to have been executed by Julian P. W. Richmond, August 12, 1913.)

It is too bad that everything I have to say goes on the record. I have other things to remember than every little piece of typewriting that I signed. (After reading.) I signed many such proxies and signed that proxy. C. W. Thorn probably presented that to me for my signature. He may have sent it to me by mail. I think I interpreted it myself. May have talked with C. W. Thorn about this proxy but do not recall the details of the conversation. Signed it for the same reason that proxies are usually signed—for the reason of inability or disinclination of the principal to perform the work delegated to the proxy.

(Paper offered in evidence as Plaintiff's Exhibit 11 in connection with this deposition. It is a consent to declare dividends similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman.)

I believe that paper (Exhibit 11) which I signed came through the mail. Believe I received this paper which bears the title "Pacific Oil Lands Company," also "First Report to Stockholders," dated January, 1914; don't remember when I received it or when with reference to the time I signed the consent to the distribution of the $20,000 dividend on January 7, 1914. Very likely I read

(Deposition of Julian P. W. Richmond.)

this report at the time I received it. Don't remember whether I received any money or thing of value after signing this consent to the [255—148] dividend distribution.

Q. I now invite your attention to check dated San Francisco, 1/12/14, No. 1206, drawn on the Bank of California, National Association, San Francisco, made payable to the order of Julian P. W. Richmond, in the sum of $20.00, signed Pacific Oil Lands Company, F. E. Harrison, Secretary and Treasurer; L. B. McMurtry, Vice President; and bearing on the back thereof the following endorsement in writing: "For deposit, Julian P. W. Richmond," and underneath that "Julian Richmond," and other rubber stamps of banks apparently. Will you please examine that check (showing witness)?

A. That is my endorsement. I received and cashed that check, but don't remember from whom. Don't remember that I received any money after receiving this check for $20.00.

Q. Do you know whether or not you received this check for $20.00 because you had signed the power of attorney in December, 1907? A. I do not believe so. Q. Why do you think you did receive it? A. I believed it was a *bona fide* dividend.

This check was deposited in my own bank January 20, 1914. Don't remember whether that was before or after I surrendered certificate No. 28 in the Pacific Oil Lands Company, or whether I

(Deposition of Julian P. W. Richmond.)

have any interest in that company. Don't know whether I have any stock certificate. Don't think I have any Pacific Oil Lands Company stock at present.

Q. Can you now tell me how much money you received by reason of the fact that you signed the power of attorney on December 21, 1907, appointing Mr. McMurtry as your attorney in fact for the purpose which I have theretofore mentioned. A. I don't acknowledge having received money from Mr. McMurtry. Q. How much money have you received from any person or any corporation, or any persons, or any corporations, or any other sources whatsoever, by reason of the fact [256—149] that you signed a power of attorney on December 31, 1907, constituting Mr. McMurtry your attorney in fact for the purpose I have mentioned? A. I don't know that I received any money for any purpose so mentioned, and I don't know what sums of money I received from any persons or corporations mentioned. Q. What sum or sums of money, if any, have you received from Mr. McMurtry, or any other person, or any persons or corporations by reason of the fact that Mr. McMurtry, acting as your attorney in fact, used your name in the locations of placer mining claims on the public domain in California? A. I don't remember receiving other sums than those indicated by the two checks shown to me to-day. Q. To refresh your memory, Mr. Richmond, didn't you receive the sum of $300.00 from Mr. C. W. Thorn

(Deposition of Julian P. W. Richmond.)

at the time you surrendered certificate No. 28 in the Pacific Oil Lands Company? A. I don't remember receiving money from Mr. Thorn at that time. Had received money from Mr. Thorn, but do not recollect the purpose. Q. Was any report ever made to you by any person of the transactions surrounding the location of the public domain in the State of California, in making placer mining locations in which your name, Julian P. W. Richmond, appears as a locator? A. My answer is, I believe I received reports of progress upon such locations. Believe I received verbal reports and reports in typewriting by mail. Believe I made inquiries verbally of Mr. Thorn at the time I signed check No. 172, regarding the development of the locations in which I was interested. Learned that such development was progressing, that Mr. McMurtry was personally present, and had set drilling rigs. Did not inquire as to the description of the claim or claims upon which McMurtry had set up drilling rigs—believe that to be of record.

Q. Do you know the description of the claim or claims upon [257—150] which Mr. McMurtry had set up drilling rigs? A. I was not interested, as I thought then that a locator's claim was restricted by law to a certain area or quantity, and that I had located the full extent or limit of such law.

Have not instituted any action at law against L. B. McMurtry. I have the matter in mind. Have not sought any legal advice on the question or discussed it with anyone.

(Deposition of Julian P. W. Richmond.)

Cross-examination.

I cannot tell whether I ever have met L. B. McMurtry. Was never in San Francisco. Have no recollection of ever going to the Knickerbocker Hotel to meet anyone in connection with this transaction in California. Very probably I talked with the person who gave me this check No. 172 of $250.00 concerning giving it to me. Cannot tell whether I am friendly with Thorn now. Have had no disagreement with him. The name of the Columbus Midway Oil Company is familiar to me. [258—151]

Q. Did this Special Agent, when he took the statement which is referred to by Mr. Hall, in his remarks, swear you, or do you remember whether he did or not? A. I don't remember.

The statement was made at my home in Yonkers, New York, where I believed the writing was done. He came and saw me while I was in quarantine on account of infantile paralysis. I was extremely agitated in mind at that time. Yes, before he left I had an understanding of the motive of his call. He was at the house possibly an hour. Am an office employee of the city of New York. Visit and inspect construction work, but do not direct it. "My work is of this nature, that I write or assist in writing the reports regarding construction of the Catskill Aqueduct, which are published, and also I very often interview representatives of the press, give information to inquirers, give public lectures, and act a little bit of a publicity man." In the office

(Deposition of Julian P. W. Richmond.)

of the Board of Water Supply.

Q. You said something about your necessity of remembering other things besides pieces of paper to which you had appended your signature. Have you been engrossed in the work in which you have been engaged in the last year or two? A. I have other activities besides this position with the city. Q. And what is it, then? A. I am interested in another business. Q. Might I inquire? A. It is the sale of a patented article which bears my name. Q. Being what? A. Called the Richmond screw anchor. It is a form of expansion bolt, if you wish. I have men to whom I pay salaries for selling that article. Q. And how long have you been engaged in that business? A. For a number of years. Q. Have an office in New York City, too, have you? A. Yes, sir. Q. Did you have any agreement or understanding, express or implied, of any kind or character, that your name was to be used [259—152] as a locator for the benefit of anybody else at the time or would be at the time you gave your power of attorney, and by that I mean whether you had agreed in any way in your name that your rights could be used for the benefit of Mr. McMurtry, or any person, firm or corporation? A. I had no understanding that my name would be used to an undue extent for the benefit of others than myself. Q. In the matter of the location of lands, is it not true that no person ever suggested or insinuated to you that they were to have any interest in any lands that were located for you in your

(Deposition of Julian P. W. Richmond.)

name? A. I understood that I was a copartner in the location. Q. Yes. You mean a copartner with your other locators? A. With the other locators, yes. Q. Now, is it not a fact that Mr. Thorn was trying to convince you at the time you executed this power of attorney, and before, that he was giving you an opportunity by these locations, or by giving authority to some one else to locate for you, giving an opportunity to you of possibly to make some money in oil or oil lands out in California? A. Mr. Thorn was indebted to me, and still is, and I consider that he presented to me an investment opportunity. Q. Is it not a fact that Mr. Thorn told you that Mr. McMurtry had in view some lands or a section of the country out in California, where he thought he might be able to locate some lands that might produce oil? A. I am not sure that Mr. McMurtry named or mentioned that. Q. The power, you will recall, ran to Mr. McMurtry? A. I recall.

Have not given this matter any considerable thought since was interviewed by Special Agent Favorite. Have no definite recollection as to how I disposed of certificate No. 28 for 1,000 shares of Pacific Oil Lands Company stock.

Q. Does the asking of this question refresh your recollection: [260—153] That you were interviewed by Mr. Thorn, Mr. Searls—both Mr. Thorn and Mr. Searls—and told that the lands covered by these locations were being claimed by the Government and that it was an opportunity for you to get

(Deposition of Julian P. W. Richmond.)

$500 in cash for your interest and your stock, and that you could either take $500 or take your chance on the result? A. I recollect a discussion with Mr. Thorn upon that broad matter; I do not recall the sum stated. I recall that at the time of giving up my stock certificate No. 28 and the Columbus Midway stock certificates, that I received coin or currency from Mr. Thorn, but I don't remember what other transaction took place without having my memory refreshed.

My father-in-law is an employee of the Standard Oil Company, and has been all of his life. He knows the editors of many oil papers, and I told him of the interest I had in these stocks, and he wrote out a list of oil stocks and was informed that the stock was worthless, and someone came to me and offered me good money for worthless stock, and I made the exchange. No one, to my knowledge, had any interest in my individual rights as a locator in these lands.

Q. Did you have any agreement in writing by which, in the event of your death, or in the event of your insolvency, or bankruptcy, or incompetency, to the effect that whatever interest you had in any of those locations, was to go and become the property, either in whole or in part, of L. B. McMurtry, or anybody else? Did you get the question? A. I get the question, but I don't see its reference to your preceding question. Q. It has no reference to my preceding question. A. Has it any reference to the endorsement on the back of that check? Q.

(Deposition of Julian P. W. Richmond.)

No, sir. My inquiry or question is as to the fact whether or not, either [261—154] before or after you became a locator of lands, you ever signed any documents to the effect that, in the event of your death, insanity, or incompetency, or any other contingency arising, that whatever rights you had as a locator should pass to Mr. McMurtry or anybody else, either in whole or in part? They charge you with being a "dummy" locator, and I want to find out whether you are or not.

A. I don't recollect making any such provision.

No, I had no intention, in the event that I should die or become incompetent, that my interest in lands located out there by reason of my power of attorney, should go to anybody other than as I should will it, or to my heirs at law, in the event of my death. The question never arose before me.

No, one, to my knowledge, had any interest in these stocks besides myself. I did not account to anyone else for the money which I received on account of those locations or the lands located thereunder or the power of attorney. I do not think anyone has asked me to account for anything received or made any claim that they had an interest in whatever I was entitled to [262—155] by virtue of any locations that were made in California. I do not think anyone asserted any claim to any of the stocks or money which I received by reason of this transaction.

Q. What do you mean by "I don't think so"; *to* you mean that you have no recollection of anybody's

(Deposition of Julian P. W. Richmond.)

so doing? A. I don't remember the idea coming to me at all. Don't remember that anybody ever made any demand or claim one way or the other. I don't remember that anybody did, and I don't remember that they did not. I now clearly remember that Thorn came to see me twice in regard to my stock in the Pacific Oil Lands Company. He came once without money and the second time he came with money, which makes a great deal of difference. I believe he had three hundred dollars. Am not sure that it was not $500. Do not recall what he told me on either visit. Was very busy, as I was going to Europe on a business trip in about three days. The whole thing was wound up before I left.

Q. Can you recall now that anything was said at that interview to the effect that—counsel will notice that the paper directly in front of me now and the one to which he referred—that he said to you that time that this stock represented your interest in these locations; the Government was claiming the lands, and that he was authorized to offer you five hundred dollars for your interest, and that you could take it, if you wanted to, or speculate on the result—

Let me advise you that I am not reading from the paper. I am not intending to deceive you or anybody else in that way. A. In a general way, I recollect that Mr. Thorn said that the future of this company was very precarious; that I could cash either the whole of part of my holdings through him and that is about all I can recollect. Q. Well, do

(Deposition of Julian P. W. Richmond.)

you remember whether he [263—156] stated he was acting for anybody else in the matter or not; have you any recollection on that? A. I remember that Mr. Thorn at one time told me that he was acting for Mr. McMurtry, but I do not recall that it was this question. Q. It was long prior to that, if I understand you correctly, that you had had these stocks looked into by your uncle or relative, and he advised you that they were not of value? A. I am not answering as to the time. Q. Well, is it a fact that, at the time Mr. Thorn came to see you, you had given up all hope of realizing anything out of that stock? A. I am not the kind to give up all hope, at any time, Mr. Ach. I am very optimistic. I had given up probably as much hope as I had given thought to the matter. I was never very deeply interested in these things, this particular deal.

Don't remember what I told Mr. Favorite. Don't remember what I told Mr. Favorite. If I discussed it with him, it would have been in an unofficial way, for I knew who he was. No, I had no intention of defrauding the Government of any rich mineral land or aiding or assisting anyone else in cheating or defrauding the Government. In authorizing McMurtry to locate the land in my name I had no idea or intention of assisting McMurtry or anybody else in obtaining a greater acreage or quantity of mineral lands than he was by law entitled to. Nothing that I should characterize as shady in this transaction was ever suggested to me.

(Deposition of Julian P. W. Richmond.)

No such thought ever was presented to me. There was no hidden understanding between McMurtry or Thorn and myself. Don't remember what sum I received when I sold my stocks. Don't remember the details of that transaction.

Q. Now, when you received this report, entitled, "Pacific Oil Lands Company, First Report to Stockholders," you stated to Mr. Hall that you had read it? A. I believe I have read it [264—157] before coming here. Q. By this report you were advised that a contract had been made with the Associated Oil Company of and concerning 1440 acres of these lands? A. Yes, sir. It made no impression on me at the time.

(The substance of this report being called to the attention of the witness.)

I believe I understood it at the time.

Q. Well, now, I have passed that, and I want to know whether it is not true that you knew when Mr. Thorn came to you and wanted to buy your stock that at that time he told you personally that the Government, acting in the matter in some way or other thought this was questionable and doubtful, that is, whether the Government would take these lands away, or something of that character, and that he told you this in order to give you some reason why you should sell the stock? Now, I want you to give me some good, common-sense reason for your selling the stock after receiving information that there was $1,375,000 the Associated Oil Company was to pay? A. The $1,375,000 is very small

(Deposition of Julian P. W. Richmond.)

to divide into a million parts. Q. And even so— A. Of which I had a few. Q. Even so— A. And the proviso there is that, if the Government refused to grant a patent to the land, that seemed very plausible to me; and those things combined were sufficient then and would be still sufficient for me to part with my stock for cash. Q. I know from hearing you testify that you read every document that you received. This particular piece of stock or certificate representing the stock, shows that the par value of the stock was $1.00 per share, and there were a million shares of stock. Now, this communication which you received and read showed that the Associated Oil Company had agreed to pay for these 1,440 acres of land in which you were interested— [265—158] A. I did not know beyond the particular land I was *interest.*

I had two motives in disposing of whatever stock I did, or for whatever sum I received, and one was that I needed some money at that time, and the other one was the fear of litigation. Did not give up this stock because I believed it belonged to somebody else or that any part of it, in equity or fairness, or by reason of any agreement, express or implied, belonged to Mr. McMurtry or Mr. Thorn or anybody else. In my mind I grouped together the thousand shares of the Pacific Oil Lands Company and the 750 shares of the Columbus Midway Company.

Not to my best recollection did I receive a report from McMurtry, Thorn or anybody to the effect

(Deposition of Julian P. W. Richmond.)

that they had located on any particular quarter section or twenty acres. Don't remember receiving any letter from McMurtry concerning these locations. Don't remember any statement to me by Thorn, Searls, McMurtry or anybody as to any interests of mine in this specific mining claim or that specific mining claim in California or elsewhere.

Q. Was there any suggestion made S. H. Freeman or Harry B. Thorn, to you, or by you to either one of those men, that your locations or the locations which would be made by Mr. McMurtry under this power of attorney, were intended to be locations for Mr. McMurtry or for any other person than yourself, either one of them? A. My impression then was that it was a co-operative scheme. Q. Among whom, the locators? A. As provided by law. Q. Relative to the assessment work that the law requires upon locations, and relative to the development work, is it a fact that Mr. Thorn told you that if Mr. McMurtry located any lands in the names of these locators, that the lands would be of such character that he could borrow enough money on the lands to do the assessment work, and the development work? A. I took that [266—159] for granted, probably. Q. Well, I want to know whether it is not a fact that Mr. Thorn made a statement of that character to you at the time you signed the power of attorney, or before? A. The thing seems so plausible, that I do not recall anyone suggesting it to me; it would occur to me naturally,

(Deposition of Julian P. W. Richmond.)

I think. Here is a— Q. Is it not also a fact that Mr. Thorn told you, either before or at the time of your giving the power of attorney, that there would be no charge for Mr. McMurtry's services, unless he located lands out of which avails would come over and above the expense, and that then his compensation was to be fixed when the result was attained? A. I don't remember; the question is difficult. Q. You are aware that Mr. McMurtry was not a locator upon any of these lands where your name was used, are you? A. I was not positively aware at that time; my impression was otherwise. Q. Was there anything said to you that you can remember as to whether Mr. McMurtry was to be paid any money out of the avails of these lands in the event that he should locate lands and they should turn out to be oil lands? A. I remember very little about Mr. McMurtry's connections with these locations.

Believe it is a fact that I did not put up any money for location expenses or assessment expense, nor do I remember any call being made upon me by McMurtry or anybody else for such purposes or my refusal to do so. Don't remember my impressions as to the details of the financing of the development. My impression was that the development was probably upon a share and share basis, something like farmer and tenant, owner and farm tenant.

Redirect Examination.

No, there was nothing unpleasant in the interview with Mr. Favorite at my home on August 25, 1916.

(Deposition of Julian P. W. Richmond.)

He showed me certain [267—160] credentials, asked me certain straightforward quesions, which I felt morally obliged to answer and I did.

(Said affidavit offered and read in evidence, as follows:)

"Julian P. W. Richmond of Yonkers, New York, being sworn, states:

"I am acquainted with C. W. Thorn and have known him for many years. In 1907 and 1908 Thorn had an office in the same building with me in New York.

"At this time I cannot recall the circumstances under which in December, 1907, I agreed to execute the power of attorney to L. B. McMurtry to make mining locations for me, nor can I recall what representations or promises were made to me at the time this power of attorney was signed.

"In the spring of 1908 I loaned C. W. Thorn $300 and he gave me as collateral or security some shares of stock in the Empire Oil and Development Company. Some time later Thorn not having repaid the money came to me and suggested that I become one of the eight locators of new and promising mining claims through which, without expense on my part, I would have the chance of reaping a reward which would offset the unpaid loan. He did not tell me that I would have a one-eighth interest in the lands to be located. It was my idea of the matter that Thorn told me of this proposition as a favor to me on account of the money which I had loaned him. It was my under-

standing that Mr. McMurtry [268—161] was in a sense my resident agent, squatting on the land and looking after the interests of myself and the other parties.

"This talk with Thorn took place at or about the time I signed a paper dated Aug. 16, 1910, in which I ratified the previous power of attorney I had signed.

"Sometime after this paper above mentioned was signed C. W. Thorn came to me and gave me some stock in the Pacific Oil Lands Co. I don't remember what he told me at the time he gave me the stock, nor do I remember how many shares of stock I received in said company.

"Several years after I received this stock, and to the best of my recollection sometime in the spring of 1914, C. W. Thorn came to see me and asked me if I wanted to sell the stock in the Pacific Oil Lands Co. At that time I had some difficulty finding the stock certificates, having given up hope of realizing anything out of the stock. Thorn came back a second time and I turned over the stock certificates to him and he paid me something like $300.

"I have an indistinct recollection of having made a money loan to Thorn previous to December 21, 1907; in fact I still have in my possession an unpaid note from Thorn for $100 dated January 29, 1908. It is possible this note covers an earlier loan.

"JULIAN P. W. RICHMOND,

"21 August, 1916."

(Deposition of Julian P. W. Richmond.)

Subscribed and sworn to before me this 21st day of August, 1916.

J. H. FAVORITE,
Special Agent, G. L. O. [269—162]

Mr. Helm came to see me between the time I was served with the subpoena and the date of my required appearance. (Mr. Helm identified in courtroom.) He gave me his card. He told me in a general way that he was associated with the interests counter to the Government, that Mr. Ach, the chief counsel for the defense, had met other locators besides myself. The conversation was probably lenghtier than that, but that was the gist of the conversation.

Q. When you disposed of your stock in the Pacific Oil Lands Company, did you know how many shares of stock in that company Mr. L. B. McMurtry owned? A. I probably took no interest in the matter. Q. Well, did you know how many shares of stock Mr. McMurtry then owned in the corporation? A. I don't remember, no. Q. Did you know how many shares of stock any other person other than yourself owned—the corporation? A. I don't believe I did. Q. Did you know what were the resources of the corporation? A. At what time, Mr. Hall? Q. At the time you parted with your certificate of stock in the Pacific Oil Lands Company. A. I believe I had certain information at hand, such as the Pacific Oil Lands Company's first report to stockholders. Q. Did that report guide you in the value which you placed upon your shares of stock

(Deposition of Julian P. W. Richmond.)

in the corporation. A. I don't think so. Q. On your cross-examination you told Mr. Ach that Mr. Thorn offered you an opportunity to invest in this matter. What did you invest in the matter? A. Is that my very first transaction? Q. I mean at any time in this transaction. A. I understood at the time—I believe at the time that I had the right to make such locations— Q. I did not ask you that, Mr. Richmond. A. And having once made certain locations, I would be estopped from making other locations, and my investment was my original power of attorney [270—163] Q. Did you invest any money in this transaction? A. The answer is, not directly. Q. Did you indirectly? A. I had a mental reservation— Q. I asked you not about mental reservation, but what you did. A. I think I have answered. Q. I ask you to answer it again. Q. What money you invested in this investment? A. I did not invest money in the sense that money is usually invested. Q. Well, in what sense then did you invest money? A. I thought at that time that my opportunities for locating claims were limited and that by once having located a claim I could then in future never locate any more. In other words, I gave up something which was irrevocable. Q. I am asking you about what money you invested. A. I invested no sum of money outside of possible incidental expenses. Q. What were your incidental expenses? A. Carfares and postage.

At the time I transferred my stock in the Pacific Oil Lands Company, I believe I parted with the

(Deposition of Julian P. W. Richmond.)

whole of my holdings. When I said on cross-examination that at the time of signing the power of attorney my impression was that it was a co-operative scheme my understanding was that those acting with me were, the number of persons whom the laws empowers to so act. I don't remember all of the persons that I understood were so acting. I can only distinctly recall Mr. Thorn's son, Harry Thorn, and his son-in-law, whom I do not recollect by name; Mr. Thorn was present and may or may not have been a locator.

Q. What was said by anyone at or prior to the time you executed the power of attorney as to Mr. McMurtry's compensation in these transactions? A. I don't remember it being mentioned. Q. Did you have the impression at that time that Mr. McMurtry was a locator, too? A. I don't remember that Mr. McMurtry was in my thoughts at all at the time. [271—164] Q. And did you know to whom you were giving your power of attorney? A. I must have known at the time. Q. Then who was it? A. I now believe it was Mr. McMurtry. [272—165]

**Deposition of Edwin L. Powell, for Plaintiff.**

EDWIN L. POWELL, a witness called April 17, 1917, on behalf of the plaintiff, testified by deposition as follows:

Reside at Somerville, Massachusetts. Am vice-president of the H. E. Holbrook Company, manufacturers' agents of window screens, etc., and also manufacturers of certain hardware specialties.

(Deposition of Edwin L. Powell.)

Was a partner in the company from 1898 to about 1911, when the partnership was turned into a corporation, since which time I have been vice-president. Was born in Indianapolis, Indiana, and was educated in the public schools of Indianapolis, Brooklyn, New York, and Stanford University, at which latter institution I was two years, not completing the course on account of illness. Lived in California about three years, during 1894–1897. Was not engaged in any business there and learned nothing of the oil fields while there. Was in San Francisco from November 12 to December 10, 1916, in connection with Government suits against certain oil companies. Don't know their official titles. Yes, believe it was United States against the 32 Oil Company and others, No. A–38, and United States versus Record Oil Company, A–41. Was requested to go by telegram from Mr. Helm, now present in the courtroom. I testified on the side of the defendants. Mr. Helm had previously interviewed me and given a brief outline of this matter, and said that there was a possibility that my presence would be desired in California in connection with it. I knew in a general way he represented the Oil Companies who were defendants, but did not know who they were. After I was in California I commenced suit against several different persons, Mr. McMurtry, E. A. Hoeppner, Mr. Searls, and Mr. Harrison I believe was mentioned also. Believe that suit is pending. Suppose [273—166] it is pending in California. A. I. McCormick is my attorney and

(Deposition of Edwin L. Powell.)

was suggested to me by Mr. Helm. The suit was to obtain an accounting in certain transactions in which Mr. McMurtry was my agent, in the location of oil lands under power of attorney, which I gave him. Was in New York in May, 1907. First became acquainted with L. B. McMurtry during the year 1906. Was then a salesman for the Underwood Typewriter Company, and met McMurtry at No. 299 Broadway. I introduced myself to him. He was then in the oil business. Don't remember exactly the title of the company. Believe it was called "Great California Consolidated Oil Company." Sold him some typewriting machines. Received stock in the Empire Oil & Development Company in payment. Called there quite frequently and Mr. McMurtry talked oil to me a great deal, and I was quite interested in his proposition and sort of gradually got into it myself. Finally, on June 3, 1907, gave up my position with the Typewriter Company to go with McMurtry. Went with him to attempt to help finance the company, to sell stock in the Empire Oil & Development Company. Sold stock locally, then went out of town and went to Canada. Had a few hundred shares of Empire Oil & Development Company stock at the time I went with McMurtry; shares that I had received in payment for typewriters and from time to time Mr. McMurtry gave me stock in the company as part payment for my services. Received a commission for selling this stock, either twenty or twenty-five per cent—don't recall exactly. C. W. Thorn was employed in McMurtry's office then, F.

(Deposition of Edwin L. Powell.)

H. Searls was also sometimes. Don't recall what Thorn did, but he was running errands, I believe, and did whatever office boy work that was required. Believe Searls was treasurer of the company. I was then engaged until December, 1907.

Q. I exhibit to you a certified copy of the power of attorney [274—167] given by yourself and others to Mr. L. B. McMurtry on December 18, 1907 (Plaintiff's Exhibit 7). Did you sign such an instrument? A. Yes, sir.

Signed it in the office of the Empire Oil & Development Company, 299 Broadway. McMurtry asked me to sign a few days before. The matter had been discussed a number of times and he mentioned the possibility of locating public oil lands in California, explaining quite fully the procedure, and suggested that he obtain a power of attorney from a number of interested parties and asked me to secure some, so that if, when he returned to California, there were public oil lands, which might be available as oil lands, he would be in a position to locate them. By interested parties he meant those interested with us in the Empire Oil & Development Company. This company was in bad condition at that time, the attempt to finance it having proven a failure on account of the panic of November, 1907, and they had reached the end of their rope. I do not recall what their entire objects were. They were to obtain and develop oil lands in California, but just the scope of it, I do not recall at this date. Believe they claimed to have options on same properties and leases on others—

(Deposition of Edwin L. Powell.)

oil lands in California. No development was being carried on then to my knowledge. Interested in this company were Mr. Thorn, Mr. Freeman, Mr Searls, Mr. Harder and myself. Those were the ones immediately interested. McMurtry left New York a few days after the signing of this power of attorney, about December 20.

Q. Then you think the matter of the execution of the power of attorney was talked of just a few days before it was executed, finally executed? A. The definite talk on it, yes; it had been discussed probably for a good many weeks before then.

I asked Taylor and Meinecke to sign this power within a [275—168] short time, within a few days before signing. Cannot fix the time. It was possibly a week before, but do not think it was as much as two weeks. Had known Meinecke eight years. He was employed by the Underwood Typewriter Company. Talked more or less about the general oil matters with Mr. Meinecke, as I had with others in the Underwood Typewriter Company, and I explained the situation to him to considerable length as to the possibility of there being oil lands in California, which could be located, and I represented to him that if he signed the power of attorney and gave Mr. McMurtry authorization to locate the lands in his name, that it might be to his financial advantage. Don't remember whether I was present when he signed I probably did ask him to go up to the office of the company and I possibly might have gone up with him, but I don't recall that definitely. Taylor was an

(Deposition of Edwin L. Powell.)

intimate friend of mine. He had lived with me for a number of years in my home and he was from California. When he first came to New York, he worked with the Underwood. Told him substantially the same thing that I did Meinecke. McMurtry had explained the placer mining laws to me. I understood that one man could locate twenty acres in one parcel; I understood in order to locate a large area it was necessary to associate persons under groups of eight. Don't recall being present when any of the others signed. After signing this power, up to March, 1908, and when I left New York, I was frequently in the office of the Empire Oil & Development Company. Received a few letters during that time, probably half a dozen in all. Had no definite news from Mr. McMurtry during that period. Simply knew that he was busy trying to locate lands. Inquired of Searls about this matter by correspondence and wrote direct to McMurtry a number of times. Had no definite information at all, simply that progress was being made. Believe the report was that Mr. McMurtry had [276—169] located lands under our power of attorney for us. Q. Did he tell you where they had been located? A. In San Benito. Q. What locations did Mr. McMurtry advise you had been made in your name? A. He did not advise me definitely as to just what locations were made, either the number of them or just where they were located, but simply the lands that he located were in the Midway field, and also in San Benito County, San Benito field. Q. Did he advise you that

(Deposition of Edwin L. Powell.)

he had located lands, both in San Benito field and in the Midway field in 1908? A. I don't remember. I would not swear definitely that he did at that time.

Would not be able to fix the date even approximately as to when I first learned that McMurtry had used my power of attorney in making any definite locations. I was told by Searls and McMurtry that lands had been located under my power of attorney. Cannot say just when. The first paper I signed after signing the power of attorney was the ratification of that power of attorney.

(This ratification read in evidence as Plaintiff's Exhibit 12. It is similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman, and purports to have been executed by Edwin L. Powell August 22, 1910.)

I recognize my signature on this photographic copy. McMurtry presented this to me personally in Boston for execution. He said that a ratification of the power of attorney which I had given him was necessary in order to enable him to consumnate certain deals that he had in prospect. That the lawyers for the people to whom he was trying to dispose of those lands required a ratification of this power of attorney to show that we were real people and that we were alive, and that we were in touch with the matter and approved of Mr. McMurtry's action. Did not know at that time [277—170] how many locations had been made in my name?

Q. Did you make inquiry of Mr. McMurtry at that time in regard to this contract of August 4, 1910?

(Deposition of Edwin L. Powell.)

A. I asked what the purport of the document was and Mr. McMurtry explained that there had been no contract actually entered into, this was simply a prospective contract, a preliminary step to a contract which he hoped to close. He did not tell me anything of the substance or effect of this contemplated contract with Herrin and others, except that if the matter went through, that it would involve a very large amount of money, and that I would have a liberal amount coming to me. Between that and the next step in the proceeding, I might have seen Searls. I talked with Searls a number of times and wrote him a number of times in respect to these oil land transactions. He just reported progress and never gave me any definite information as to how matters were progressing. Said that McMurtry was still attempting to put through various deals and that he had not been successful. I wrote McMurtry a number of times and got very few letters in reply. They are in my attorney's possession.

Q. I invite your attention to a check numbered 114, which is dated New York, September 23, 1910, drawn on the Second National Bank of the City of New York, by F. H. Searls, made payable to the order of William Mahr, do you remember of having received a check similar to that one which was made payable to your order and possibly bearing another date and another number? [278—171] A. Yes, sir. Q. From whom did you receive your check similar in character to this one made to Mr. Mann, or Mr. Mahr? A. I did not exactly receive a check; it was

(Deposition of Edwin L. Powell.)

exhibited in my presence by M. Searls. Q. When was it that Mr. Searls exhibited this check in your presence? A. It was not, I should say, until a month or six weeks after I signed the ratification of the power of attorney. Q. Do you remember the amount of that check? A. Yes, sir. Q. How much was it? A. $250.00. Q. Did you add your name to that check at any place? A. I did, I endorsed it on the back. Q. Look at the check of Mr. Mahr; I find upon the back of it in typewriting, the following language:

> "Received from L. B. McMurtry, $250.00 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907."

Was there a similar receipt or conveyance or similar language upon the back of the check? A. I believe so. Q. Which you signed? A. I believe so. Q. Did you sign your name immediately under it? A. I believe I did.

Received $250.00 in cash at the time I signed that check.

Q. Did Mr. Searls tell you why he was giving you this check for $250.00? A. He explained to me that that was part of the proceeds of some minor deal which Mr. McMurtry had out through in California and that a like amount was being distributed to each of the other locators.

I read the typewriting on the back of the check

(Deposition of Edwin L. Powell.)

before signing. Did not know how many claims McMurtry had located under this power of attorney at that time. No definite report was made to me at that time as to the condition of affairs with respect to those oil lands everything was always very vague, no detailed [279—172] report at any time was made to me, by Searls or anyone else. Was in New York frequently after signing the check and would telephone or drop in to see Searls and inquire concerning these oil lands. He was always optimistic and hopeful but gave no definite information.

Q. Have you any information with respect to the stage of the negotiations contemplated by the contract of August 4, 1910, between Mr. McMurtry and Herrin and others? A. No, sir. Q. Did you know or were you advised as to whether or not that contract had been finally executed? A. I was advised that it had not been. Q. Who advised you that it had not been? A. Mr. Searls. Q. Had you heard of any other contracts that were contemplated or had been executed with respect to these lands at the time you signed the check for $250? A. No definite contract, except that I was told that Mr. McMurtry had made one small deal which had netted a small amount, enough to make this division possible. Q. Did you know what deal that was, or the lands it affected? A. No, sir, and never had any definite information in regard to any of the transactions.

In the fall of 1911, I received in New York from McMurtry a certificate for 1000 shares of Pacific Oil Lands Company stock. Met McMurtry personally

(Deposition of Edwin L. Powell.)

at that time at the Knickerbocker Hotel. He then said that he had organized the Pacific Oil Lands Company and had turned all these lands, had transferred all these lands to the Pacific Oil Lands Company, to facilitate the handling of them, to facilitate deals, which he might, which might be made concerning them. I did not know at that time whether or not the contract of August 4, 1910, with Herrin and others, had been consummated. Do not recall that I ever heard of any contracts between McMurtry and Mrs. J. M. McLeod with respect to those lands. [280—173] except what I remember hearing in court in California, during the progress of the trial in which I testified in November, 1916. I met McLeod at that time. I might have heard his name mentioned by either Mr. McMurtry or Mr. Searls, but it made no impression on me than the hearing of any other name.

Q. At the time you received the certificate of stock of the Pacific Oil Lands Company, which is certificate No. 19, and I now present it to you as it is attached in the original stock book of the Pacific Oil Lands Company, did you know of the execution of any contracts between Mr. McMurtry and Herrin and others, or between Mr. McMurtry and Mrs. J. M. McLeod and others? A. No, sir. This certificate No. 19 is the certificate I received from McMurtry in the fall of 1911, at the Knickerbocker Hotel in New York. The receipt which is pasted upon the stub of certificate No. 19, which reads as follows: "Received certificate No. 19, for 1000 shares of Pacific Oil Lands Company, dated Sep-

(Deposition of Edwin L. Powell.)

tember 12, 1911," bears my signature. I was asked to sign this receipt by McMurtry. He did not explain why he wanted me to sign it.

Q. I invite your attention now to a receipt or rather the following language upon the back of certificate No. 19, to wit:

> "For value received, I hereby sell, assign and transfer *until* Walter S. Brann ——— shares of the capital stock represented by the within certificate, and I do hereby [281—174] irrevocably constitute and appoint Walter S. Brann to transfer the said stock on the books of the within named corporation, with full power of substitution in the premises. Dated March 14, 1914. Signed, Edwin L. Powell. In the presence of ——— this ——— day of ———."

Is that your signature to that (showing witness)? A. That is my signature, yes, sir. Q. When did you sign that, Mr. Powell? A. On the date indicated. Searls requested me to sign that in New York, I believe.

Q. What was the conversation that occurred between you and Mr. Searls at the time he requested you to sign that transfer? A. Mr. Searls told me that the affairs of the Pacific Oil Lands Company were not progressing satisfactorily; that the stock was practically valueless, but that Mr. McMurtry had authorized him to give me $250 for it. Q. What did you receive, if anything, of value, when you signed your name to this transfer, to

(Deposition of Edwin L. Powell.)

certificate No. 19? A. I received $250 in cash. Q. Since that date have you ever received anything of value on account of the fact that your name appears upon any oil land locations in the State of California? A. No, sir. Q. At the time you signed this transfer on the back of the certificate on March 14, 1914, what did you do with the certificate? A. I delivered it to Mr. Searls. Q. Since the time you delivered the certificate to Mr. Searls, have you received anything of value on account of your name appearing as a locator upon any oil lands in California? A. No, sir. Q. At the time you delivered certificate No. 19 to Mr. Searls, did you know who was in possession of any lands upon which you appeared as a locator in the State of California? A. No, sir. Q. Did you know at the time you surrendered that certificate, anything as to the condition of the lands upon which your name appeared as locator? A. No, sir. Q. Did you know the condition, [282—175] the financial condition, of the Pacific Oil Lands Company at that time? A. No, sir. Q. Did you know what the assets and resources of that company was or were at the time? When you delivered or surrendered certificate No. 19. A. No, sir. Q. Did you know how many locations of public oil lands had been made upon which your name appeared as a locator or colocator at the time you surrendered this certificate? A. No. Q. At the time you surrendered certificate No. 19, had you made inquiry, any inquiry as to the number of claims upon which your

(Deposition of Edwin L. Powell.)

name appeared as a locator? A. I do not—I never asked that specific question of anybody, no, sir. Q. Did you at the time you surrendered certificate No. 19, had you ever inquired of any person as to the condition or state of development of any of the lands upon which your name appeared as a locator? A. No. At the time you surrendered certificate No. 19, had you ever inquired of anybody who was in possession of the lands upon which your name appeared as a locator? A. No, sir. Q. At the time you surrendered certificate No. 19, had you inquired of any person as to the financial condition and resources of the Pacific Oil Lands Company? A. No, sir, except that I made general inquiry of Mr. McMurtry and Mr. Searls and Mr. Thorn on every possible occasion as to how matters were progressing in regard to these lands. Q. What would they tell you when you inquired? A. I never could get any definite information; sometimes the information that I got was optimistic, that there were great possibilities, and the next time it was very pessimistic, the bottom had dropped out of everything; I could never get any definite information from anybody. Q. At the time you received certificate No. 19, did you read it? A. Yes, sir. Q. Did you know at that time what the capital stock of the Pacific Oil Lands Company was? A. I probably did. Q. At the time you received [283—176] Certificate No. 19, did you know who were the stockholders in the Pacific Oil Lands Company? A. No, sir. Q. Did you know

(Deposition of Edwin L. Powell.)

how many shares Mr. L. B. McMurtry owned in the company at that time? A. No, sir. Q. Did you know how many shares of stock Mr. E. A. Hoeppner owned in the Pacific Oil Lands Company? A. No, sir. Q. Did you know how many shares of stock either one of those gentlemen owned at the date you surrendered certificate No. 19 to Mr. Searles? A. No, sir. Q. At the date you surrendered certificate No. 19, did you know what had become of the title and right to possession of the lands upon which you appeared as a locator in the State of California? A. No, sir. Q. Did you make any inquiry of anybody at the time of surrendering certificate No. 19, as to the title and right of possession of those lands? A. I don't know that I made any inquiry on just that way. I inquired of Mr. Searls as to general conditions, but not any specific inquiry of that sort.

(Proxy dated August 15, 1913, handed witness.)

That is my signature on that. Believe I received it by mail probably sent to me by Mr. Harrison, who was connected with the Pacific Oil Lands Company, I believe as secretary and treasurer. Don't remember whether a letter accompanied it or any advice that I received with respect to that paper, and my execution of it. Probably had some letter explaining the purport of it, but do not remember that I did.

(Plaintiff's Exhibit 13 read into deposition. It is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman, and

(Deposition of Edwin L. Powell.)

purports to have been executed by Edwin L. Powell, August 15, 1913.) [284—177]

Probably returned that proxy to the person who sent it to me. Did not at that time have any definite information as to the number of claims on which I appeared as a locator in the State of California, or as to the condition or state of development of those claims.

Yes, that is my signature. (Plaintiff's Exhibit 14.) The paper first came into my possession probably approximately at the time it is dated, December 13, 1913; came by mail, I believe, from Mr. Harrison. I read it before executing it, and returned it to Mr. Harrison.

(Said exhibit offered and read in evidence as Government's Exhibit 14 with the deposition, *as* is as follows:)

(This exhibit is similar in form to Plaintiff's Exhibit 6 with its deposition of Frank B. Chapman, and purports to have been signed by Edwin L. Powell, December 13, 1913.) [285—178]

There was probably a letter with that paper. If there is any such letter, it is in the hands of Mr. McCormick. Do not recall that there was any other writing or typewriting accompanying the letter and paper. Probably a month later I received from the Pacific Oil Lands Company a check for $20.00.

Q. I invite your attention now to a check which is, in substance, as follows:

(Deposition of Edwin L. Powell.)

"San Francisco, 1/8/14. No. 1185.

THE BANK OF CALIFORNIA.

National Association, San Francisco.

Pay to the order of Edwin L. Powell, $20.00—Twenty dollars.

PACIFIC OIL LANDS CO.

F. E. HARRISON,

Secy. & Treas.

L. B. McMURTRY,

Vice-Pres."

Is that check the check you received (showing witness)? A. Yes, sir. Q. And that is your endorsement on the back of the check, is it not, Edwin L. Powell (showing witness)? A. Yes, sir. Q. What did you do with the check? A. I put it through my bank, as I remember it.

This check came by mail addressed in Mr. Harrison's handwriting. There probably was a letter with the check. It was probably a letter explaining what the check was, probably explaining that the check was a distribution as a result of my authorization, to my consent to the distribution. Don't know [286—179] where this letter is. May be in the hands of Mr. McCormick. I turned over to Mr. McCormick all the communications in regard to this matter that I had received. Do not recall that there was anything in this envelope besides the check and letter from Mr. Harrison, if there was such a letter.

Q. I invite your attention now to three typewritten sheets which bear the title, "Pacific Oil

(Deposition of Edwin L. Powell.)

Lands Company, First Report to Stockholders," and in pencil, in the upper right hand corner, appears, "Jan. 1914," and in the upper left hand corner, in pencil, the initials, "H. A.," and just below that the initials "F. H." Please examine those sheets of paper carefully, Mr. Powell (showing witness).

Q. At the time you received the last check for $20.00 to which we have referred, did you receive this report or a copy of it? A. I believe not.

I do not believe I ever received a copy of it. I believe the first time I ever saw it was in California last November. Received this check for $20.00 before I surrendered the certificate No. 19.

Q. I want to get as definite a statement as I can from you in regard to the receipt of this Pacific Oil Lands Company's report, and I may become somewhat leading in my questions, but the burden of that I will take myself. Do you now say that you positively did not receive this report? A. I say to the best of my recollection I did not receive it, [287—180] but I cannot say positively that I did not.

I may have, but I think it is very unlikely that I did, because I have absolutely no recollection of having received it. I am the person who appeared as a witness for defendants November 20, 1918, in case No. A–38, United States vs. Thirty-two Oil Company, pending in the Northern Division of the Southern District of California. Was then ex-

(Deposition of Edwin L. Powell.)

amined by Mr. Oscar Lawler, who appeared for defendants there.

Q. I invite your attention now to the following portion of your testimony which is found at pages 598 and 599, of the stenographer's transcript in that case, as follows:

"Q. Can you recall the substance of any of these conversations that took place—I presume they took place at the office of the company usually, didn't they? A. Yes, sir. Q. In the latter part of the year 1907 and prior to Mr. McMurtry's leaving for California? A. Mr. McMurtry had many times talked with me and others in my presence in regard to the probable value of oil lands in California, and he represented them, in his opinion, to be of very great value, and he stated that it was his opinion that there were in California valuable oil lands or oil land which would probably become valuable which would be subject to location—Government lands. Q. Do you recall the occasion of the execution of a power of attorney authorizing the location of oil lands? A. Yes, sir. Q. Will you state as nearly as you can recall them the circumstances under which that occurred and the conversation that took place at or about that time with reference thereto? A. Mr. McMurtry explained something of the laws under which oil lands might be located, and said that a certain number of persons would be necessary to associate themselves, in groups of eight, I believe, in order to locate these Government lands, [288—181]

(Deposition of Edwin L. Powell.)

after which location it was necessary to do certain work in order to retain them and get title to them, and we talked it over a good many times about the possibilities of locating such lands, and in that way making up for the hard times we had been through and recouping our losses in this other proposition. Q. That is, the losses sustained in the Empire Company? A. Yes, sir." Do you remember of having so testified before the Court in San Francisco on the date I have mentioned? A. Yes, sir. Q. Mr. Powell, do you know when your name was used [289—182] upon any location notice or first appeared upon any location notice of the northeast quarter of section 34, the northeast quarter of section 20, the northeast quarter of section 22, or the northeast quarter of section 26, in township 31, south, range 23, east, in Kern County, California? A. No, sir. Q. The records of Kern County, California, disclose that the lands I have just described were located on January 1, 1909, by Mr. McMurtry, using your name and the names of seven others. Prior to that time had you any communication or dealings whatever with F. H. Denison, R. E. Price, or Pierce, C. A. Converse, H. B. Rentschler, and Jesse Cunningham, with respect to any rights that they might have had in the lands I have specifically described, prior to December 31, 1908? A. I never heard of any of those persons; I never had any dealings of any sort with them, and did not know that they existed.

Had no knowledge prior to December 31, 1908,

(Deposition of Edwin L. Powell.)

as to the state of title or the right of possession with respect to these northeast quarters of sections 34, 20, 22 and 26, and was not advised that these persons whose names you have just called, F. H. Denison and others, had been located upon these lands by McMurtry under their power of attorney.

Cross-examination.

No, nothing was said in this conversation with McMurtry about locating oil lands in California, as to his wanting to use my name in order to locate the lands for his benefit, or that he might acquire an interest in them, nor did I make any such suggestion in soliciting Taylor and Meinecke to sign, or suggest that they should act as dummy locators for McMurtry or anybody. No suggestion or intimation was made to me by McMurtry that he [290—183] wanted to use the names of thirty-two people, or any people, so as to take up land in California for his own benefit. This subject was never broached at any time by McMurtry, Searls or any body on behalf of Searls or McMurtry. No, these locations were not to be made for the benefit of the Empire Company, but for the individuals. We had been in an unsuccessful venture together and we were naturally looking for means of making some money. And Mr. McMurtry suggested the location of oil lands in California as a means to that end. Yes, I remember during these conversations I was having with McMurtry in New York in 1911, which indicated that he was in possession of the lands and was doing his best to stay in possession of them, and something

(Deposition of Edwin L. Powell.)

about having trouble in keeping off jumpers, but had no personal, actual knowledge, or no definite or specific information on those points. There were always stories told by McMurtry and Searls of difficulties and troubles and obstacles they met in the way of executing contract which they had tried to execute, and holding the lands the explanations were made in such a way that I understood that Mr. McMurtry was pretty well occupied, pretty busy, in looking after the properties. Yes, the low price of oil at various times was given as one of the difficulties they encountered in their operations out there in regard to these lands, and something about the land being withdrawn by the Government, which would probably lead to litigation. At the time McMurtry got me to sign this ratification (Exhibit 12) he told me it was a very delicate proposition and there was considerable question as to whether it would go through or not. Do not recall his calling my attention to the fact that the Government had attempted to withdraw these lands and that question might have to be met too. Cannot fix the time when I first knew of that. At the time I [291—184] signed this ratification I understood from McMurtry's explanation as to the matter that these contracts were all prospective profits and that there was simply a contract which would look to the development of the lands and profit would come, if the land proved to be valuable. There was no intention on my part at any time to permit my name to be used by McMurtry or anybody else in the matter of these

(Deposition of Edwin L. Powell.)

locations to cheat or defraud the Government in obtaining from the Government any greater acreage of land than I or any other person would be entitled to, and I know of no such intention on the part of any of the thirty-two locators. Was not advised at the time I signed these ratifications or at the time I received the check for $250.00 or at the time I signed the transfer of stock or any time prior thereto, that McMurtry had received moneys from the Associated Oil Company from any contracts.

When I saw Searls in Boston prior to going to California, either 1912 or 1913, he told me that he had been waiting until things progressed far enough so that his services would be needed out there, and he said that Mr. McMurtry had sent for him and had told him to come out to California, and that he had packed and shipped his household goods, and that he was then on his way to California, in a roundabout way, was going to stop off in Maine for a short visit before he went out; he said the situation looked promising out there, and looked like they would be able to do something substantial as property deals were pending.

At the time I turned over my stock Searls gave me to understand and he told me that there were no prospects of any further returns from the project; he told me that the stock was practically valueless. The withdrawal by the Government was one of the difficulties. Nothing was said about McMurtry having received any sum of money like $85,000, or $175,000, or any [292—185] substantial sum at all. He

(Deposition of Edwin L. Powell.)

said the lands were practically, the project was practically a failure, and he said the stock was not really worth anything, but, in order to facilitate Mr. McMurtry's handling of the affairs from that point on, to combat the troubles that were arising, that Mr. McMurtry wanted the stock in his own hands, all of it, and offered $250 for my 1000 shares. That if the Government should proceed and take the land away there would not be anything in this thing at all either under the contract that was contemplated or in any way. Yes, that was substantially what he said. Mr. Brann accompanied Mr. Searls on one of his trips to Boston, and we three had breakfast together at the Adama House in Boston. Cannot say whether that was before or after the stock transaction. Did not know that Mr. Brann had any interest whatever in the transaction. He was introduced as a friend of Searl's. Yes, on a number of occasions when I had conversations with McMurtry, he said, "Leave the matter with me," and when anything important had been achieved we would all have a full report of it. Yes, I understood that the matter would be handled by leasing or giving away part of the lands that McMurtry could have the entire lands in the areas in which he might locate for us developed, and give actual value to the parts that were retained. No, we were not absolved from the payment of assessment work or charges for development. Yes, I gave him full power to mortgage or sell or do with the lands whatever, in his judgment, was best to bring us financial returns. The subject of McMurtry's

(Deposition of Edwin L. Powell.)

compensation was never discussed. I understood that McMurtry was to be reimbursed for his work and services. He was a practical man and was acting as our agent and if any valuable properties were secured by his actions as our attorney, he was to be liberally compensated for his work and handling it for us. That matter [293—186] was never discussed by me with anybody else. It was wholly a matter for the future. That was simply my understanding. At the time I signed this check for $250.00 with the endorsement on the back, I left it with Searls and he gave me $250.00. He said that he would save me the trouble of putting it through my bank, and if I would endorse it he would cash it for me right there.

Q. And that you received this money on the check some time in 1910, which was a year or approximately a year before the organization of the Pacific Oil Lands Company? A. Yes, sir. Q. Can you explain to me, as you read this endorsement, how it came that you endorsed it, and how it was that, notwithstanding your endorsement in 1910, transferring all your interest in these lands, pursuant to this check to Mr. McMurtry, you afterwards in 1911 got 1,000 shares of stock and afterwards that was purchased from you? In other words, why did you do this at that time, and what was the occasion, and what he said to you? A. I will explain it as it was explained to me. Q. Yes. A. I signed that, and I told Mr. Searls I was apparently signing away my birthright, and he said that was simply a matter of

(Deposition of Edwin L. Powell.)

form; that that did not really change my status at all in the matter in these lands or locations, and that was simply a matter of form, and it was wanted to facilitate negotiations, and I received the stock in the oil lands company a year later. Q. I have either missed part of your answer or I did not quite understand it. Do you mean to say that at the time of this check being presented to you by Mr. Searls, you questioned with him the execution of the instrument on the back of the check? A. Yes, sir. Q. And that he told you this was simply a matter of form and that you still retained your interest in the locations? A. Yes, sir. Q. Did he give you a [294—187] more specific reason, and by that I mean, did he tell you why Mr. McMurtry, in giving you this $250 as a result of some returns from some of these located lands, and giving the same amount of money, as I understood you to say, to each and every other locator, was asking for that kind of document, did he say anything at all about its not meaning what it said, that it might be error? A. Yes, sir, that was the whole explanation; it was always given to him with the understanding that it would facilitate the negotiations that were pending, and he assured me the document did not mean what it said. Q. In other words, you had already given Mr. McMurtry your power of attorney to locate lands and sell them and do as he pleased with them? A. Yes, sir. Q. And you thought that you were executing a power of attorney in another sort of form by reason of what

(Deposition of Edwin L. Powell.)

Mr. Searls said? Q. Was that what Mr. Searls said to you, in substance and effect? A. Yes, sir. Q. But you cannot recall the language of what he said? A. No, sir. Q. After you got this check, which was in 1910, Mr. Searls was in and about New York, you in Massachusetts, until at least 1912, and 1913, when he went to California? A. Yes, sir. Q. Did your correspondence concerning this land with Mr. Searls occur after you had received this check and this money? A. Yes, sir. Q. Did he ever say to you, or did Mr. McMurtry ever say to you, afterwards, that you were simply being treated liberally and without any legal rights in the matter, when you asked him the question? A. No, sir.

Redirect Examination.

Q. When you had this understanding with Mr. Searls, about the signing of the check for $250, in 1910, is it not a fact that you understood that you were placing the title and right of [294½—188] possession to these lands in Mr. McMurtry's hands so that he could do with them and deal with them as he thought best? A. Not for his personal benefit, no, sir. Q. No, but I don't mean that; I mean so that he could transfer the lease or negotiate or have developed these lands, as he thought best? A. He always had that right from the very first, from the time we gave him the power of attorney and ratification of it. Q. And you understood that he could handle these lands in any way that he saw fit? A. Yes, sir, but I also understood that he was

(Deposition of Edwin L. Powell.)

to report to us— Q. Did you not understand that Mr. McMurtry had full right after you signed this check, to sell or convey or lease or develop these oil lands to third parties without further conveyance or consent from you and your colocators? A. Yes, sir, just the same rights as he had before I signed the check. Q. Mr. Ach asked you in regard to some testimony at page 637 of the record, and I read previous thereto as follows:

"Q. But your willingness to help out extended to Mr. J. B. Thickens? A. Yes, sir. Q. You wanted to see him reimbursed for the loss he had sustained in the Empire Oil & Development Company? A. Yes, sir, I was willing to. Q. And it was with that idea in mind that you executed this power of attorney to Mr. McMurtry? A. Yes, sir. Q. And it was your understanding at that time, was it not, that Mr. McMurtry was to have whatever benefit might be flowing to him out of the making of these locations? A. I didn't understand that the locations were to be made for Mr. McMurtry's benefit; no, sir. Q. Did you understand that Mr. McMurtry was to be benefited by reason of the making of the locations? A. In a general way. He was acting for us, and I expected and understood that he would be reimbursed for his services as our agent." [295—189] Did you so testify in the hearing of A–38? A. I so testified.

Never met Major E. A. Hoeppner and never consented that he should derive any benefit out of

(Deposition of Edwin L. Powell.)

the lands located by McMurtry under my power of attorney, nor was I asked to.

Q. In response to Mr. Ach's question, you said at the conference between yourself and Mr. McMurtry in Boston, when you executed the ratification, that Mr. McMurtry told you it was problematical as to whether or not certain contracts might be carried out. What contracts did you there refer to? A. The contracts referred to hinted at in the ratification that he asked me to sign.

Since delivering this certificate No. 19 to Searls, do not know whether I have any interest in the company or not, that is a question I have not been able to decide in my own mind. Have not participated as a stockholder in any corporate business of the company. This transfer on the back of certificate No. 19 was signed in blank. There was no transferee named.

Q. At the time you signed the name "Edwin L. Powell" to the transfer on the back of certificate No. 19, to whom did you intend to transfer your shares of stock in the Pacific Oil Lands Company? A. I did not know definitely who was to actually own the stock after I turned it over to Mr. Searls. Mr. Searls said that Mr. McMurtry had authorized him to give me $250 for the stock, but nothing was said as to who was to own the stock after I turned it over to him.

Did not ask Mr. Searls who was to own the stock. Have not received anything of value since I surrendered this certificate No. 19 to Searls. [296—190]

**Deposition of George W. Berry, for Plaintiff.**

GEORGE W. BERRY, called April 19, 1917, on behalf of the plaintiff, testified by deposition as follows:

Reside at 91 Ferguson Street, Corona, New York City. Estimator, in the printing business. Lived in Corona in December, 1907. Place of business was No. 9 Murray Street. Knew L. B. McMurtry a good while before that. Met him through Mr. F. H. Searls, whom I had known probably fifteen or twenty years. He was my employer at one time in the printing business. I owned some stock in the Empire Oil and Development Company. Cannot say how much. It was given me as a bonus on notes that I held of Mr. McMurtry's for money that I had loaned him. McMurtry owed me money in December, 1907.

Q. The records of Kern County, California, disclose that there is recorded therein a power of attorney (substance of Plaintiff's Exhibit 5 stated).

Are you the George W. Berry who executed that instrument? A. I did.

Have forgotten any conversation in regard to the matter, but remember it was taken up with me and I think Mr. Searls first spoke of it.

Q. Why did you sign it? A. Because I expected to gain something from the powers that Mr. McMurtry had as a developer of the land.

Expected to gain something in a monetary way. From development of the property and afterwards sale, and whatever other method would bring out

(Deposition of George W. Berry.)

profit. Imagine Mr. Searls told me about this. He was my prompter in all these acts; I didn't know an awful lot about Mr. McMurtry, except I had met him [297—191] several times. Had no knowledge of mining laws; in fact, I have none yet. Depended upon Searls for advice and information on this power of attorney and the transactions growing out of it. Don't know when I next heard about it. I was occasionally writing to Mr. Searls and he usually said something about them. Remember signing several papers afterward, but cannot remember what they were.

Q. Mr. Berry, I invite your attention to check No. 121, dated New York, September 30, 1910, drawn on the Second National Bank of the City of New York, by F. H. Searls, payable to the order of George W. Berry, for the sum of $250. On the back of that check is the following in typewriting:

> "Received from L. B. McMurtry, $250.00 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf in Kern County, California, pursuant to the power of attorney made by myself and others to L. B. McMurtry, bearing date the 21st day of December, 1907."

That is signed, "George W. Berry." Is that your signature to that check on the back thereof (showing witness)? A. Yes, sir, it is.

That check must have been given to me personally by Searls. Don't remember reading the typewriting on the back, but it must have been there.

(Deposition of George W. Berry.)

Don't remember whether I read it at the time. Did not pay the check through any bank. Think I simply endorsed it and handed it back to Searls and he gave me cash for it. Don't know why this was done. Suppose there was some conversation at the time, but these things are so vague in my mind that I don't remember what was said about it, or just exactly what it was for. Don't remember what the next paper was [298—192] that I signed.

(Government's Exhibit 14 shown witness.)

Q. Please examine it and tell me whether or not that is your signature on the paper. A. Yes, I signed that.

Don't remember who presented it to me. I think it was at the Waldorf, but am not certain. Am not certain if that was the time Mr. Thorn and Mr. McMurtry were present. Don't remember what was said to me only that I was to agree to it—to give Mr. McMurtry the right to do what he could with the land, that he was prospecting on. That is the only reason I knew. I was not well acquainted with those oil land methods. I knew that something had to be done to make it profitable and that was the only thing I knew about it. Most of the information I got was from Searls. When I was employed by him he was talking pretty much all the time about this business and occasionally I would meet him, if that was when he was in New York here, and I met him on a number of occasions. Don't know who advised me of the necessity for

(Deposition of George W. Berry.)

signing Exhibit 14. I must have read it; I don't usually sign things without reading them.

Q. You will notice that there is in this paper the following:

> "And I do hereby ratify, approve and confirm those certain contracts of sale made for me and in my name by L. B. McMurtry as my said attorney in fact with W. F. Herrin, et al., of date the 4th day of August, 1910."

Was there anything said to you about this contract of August 4, 1910? A. Not that I remember. Q. Did you know at the time you signed the ratification— A. You call this the ratification? Q. That is the ratification, Exhibit 14—about the contents or the purport of this contract of August 4, 1910? A. Why, I [299—193] know there was some conversation, probably a half or three-quarter of an hour's conversation before I signed this, and I don't remember what it was all about just now. These things slip your memory, you know. Whatever it was, it must have been something I agreed to, or I would not have signed it.

Remember receiving a letter from Searls at one time in which he made statements about different localities that McMurtry was locating. Don't think he said the number of them, only that there was something said about several, or more than one anyway. Don't know whether this letter was received before or after this ratification. Have a faint recollection of seeing a map or sketch or drawing of some kind in which there were some

(Deposition of George W. Berry.)

peculiarly shaped tracts that were laid out, and I think that must have been in the hands of Mr. Searls, and whether there was one or a dozen on that, I don't know, but I remember there was at least one. I have in mind the figure of 1400 acres. I may be wrong on that, but that seems to be the figure that I have in mind. I know there was a small quantity of something like forty acres, and I think that was the one I was interested in, some similar amount. This thing is very vague to me and after a lapse of a good many years, you lose practically all of that in fact, after you have thrown the thing aside as being something of the past, you forget these things.

There was so much told me by Mr. Searls about different tracts it is all a muddle to me. I remember that one piece of property was located a far distance from another, from the way he spoke.

(Plaintiff's Exhibit 14 offered in evidence in connection with the deposition, and is as follows:) [300—194]

(This is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by George W. Berry, August 15, 1910.) [301—195]

Cannot say whether check 121 was received before or after signing Exhibit 14. Certificate No. 32 of the Pacific Oil Lands Company, for 1,000 shares stock, was received by me and the receipt attached thereto, dated September 18, 1911, bears my signature. This certificate was received from Searls

(Deposition of George W. Berry.)

personally, I think at No. 9 Murray Street. I don't remember what conversation took place.

Q. Do you know why Searls gave you this certificate of stock in the Pacific Oil Lands Company? A. Yes. beause there was considerable interest due me on my note, and, as I understood it, Mr. McMurtry owned property on which he had a right to hand me that as part payment of some of the interest he owed me on my note, which I never received fully. Q. You say Mr. McMurtry owned the property? A. Pacific Oil Lands Company, that is, Mr. Searls used to speak of them as "Mack's property." What that meant, I don't know. I suppose, though, because he was interested in it more than some other lands; I don't know. Q. Did you give Mr. Searls anything of value for this certificate No. 32? A. No except the owing of interest on my notes. Q. Notes from whom? A. From Mr. McMurtry; and when this Empire Company went to pieces, why, I was handed some of that stock, and I think that was the stock. Q. I invite your attention now to the back of this certificate and the reading thereon, or rather the writing thereon is as follows:

> "For value received, I hereby sell, assign and transfer unto Walter S. Brann ——— shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint Walter S. Brann to transfer the said stock on the books of the within named corporation, with full power of substitution in [302—196] the premises.

(Deposition of George W. Berry.)

Dated ———, 19—.

In the presence of

———————.

(Signed) GEORGE W. BERRY."

Is that your signature to that (showing witness)? A. Yes, sir, it is. Q. Do you remember when you put that on there? A. Oh, when Mr. Searls—really, when he came to me about it and asked me to bring the stock over one day I remember be brought—or rather then I signed that. I think that was the time. Q. What did you do with the certificate at the time you signed it? A. Gave it to him, but I have no recollection of those names at all; I don't know this man. Q. You don't know Walter S. Brann? A. No. My dealings in that were with Mr. Searls.

Don't know how long I kept that certificate. Received $250 in cash when I surrendered it to Searls. (Witness identifies signature on Plaintiff's Exhibit 15.) Don't remember who presented that to me, nor do I remember executing it.

Q. Will you read the paper and see if that refreshes your memory any, Mr. Berry? A. I don't remember that. I may be muddled up on some of these papers. If I knew just where that was, when I signed that, it might recall to my mind. I think I have got several of these papers rather muddled up in my mind as to where it was they were signed. Q. I see the notary adds to his certificate in rubber stamp, "Notary Public, Westchester County, Certificate filed in New York County." Does that recall

(Deposition of George W. Berry.)

anything to your mind? A. Why, let me think now. No, it does not. I was trying to think of another document I signed, but had no connection with this at all, which was in Westchester County, but it was in relation to a deed. I cannot place that. It is my signature. I must have signed it, but I cannot recall where it was signed. If I could, I might recall the incident. Q. Can you tell me now why you signed this instrument marked Government's [303—197] Exhibit 15? A. Why, I must have been willing to give him these powers.

(Plaintiff's Exhibit 15 read into the deposition. It is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chayman and purports to have been executed by George W. Berry, August 12th, 1913.) [304—198]

I remember this. (Plaintiff's Exhibit 16.) Think it came to me through the mails with a letter signed Harrison. Must have returned it to Harrison. I still have the letter which accompanied it.

(Plaintiff's Exhibit 16 read into the deposition. This is a consent to dividend similar in form to Plaintiff's Exhibt 6 with the deposition of Frank B. Chapman and purports to have been signed by Geo. W. Berry, December 10, 1913.) [305—199]

After signing Exhibit 16, received a check for $20.00.

Q. I now invite your attention to a check, to this check, which purports to be dated San Francisco, 1/8/14, No. 1195, drawn on the Bank of California, San Francisco, and made payable to the order of

(Deposition of George W. Berry.)

George W. Berry, for $20.00. That is signed, "Pacific Oil Lands Company, by F. E. Harrison, Secretary and Treasurer; L. B. McMurtry, Vice President"; and on the back is endorsed, among other endorsements, "Geo. W. Berry." Is that the check, or does that represent the money you got (showing witness)? A. That represents the money with my name on it, and it must be the check.

Think I received it with a letter. Think the letter says why it was sent to me. I have forgotten what it was now. At the time I surrendered this Certificate No. 32 for stock in the Pacific Oil Lands Company to Searls, did not know how many claims had been located by McMurtry under the power of attorney of December, 1907, on which my name appeared. Did not know there was more than one. Thought I only had one, the right to one claim; I didn't know there was anything else. At the time I surrendered the certificate 32 to Searls, did not know what rights I had in any land that had been located under the power of attorney in my name. I cannot see how I would know. Did not know how many locations had been made in my name or how many acres of the public domain were embraced in the locations. Made no inquiries as to the number of claims or acres filed on [306—200] in my name. Did not know who the stockholders in the Pacific Oil Lands Company were, or the extent to which McMurtry was a stockholder at the time I surrendered certificate 32 to Searls. Did not know to what extent Major E. A. Hoeppner was a stockholder or what

(Deposition of George W. Berry.)

the assets and resources of the company were nor had I heard anything about the contract of August 4, 1910, between McMurtry, Herrin and others. Cannot fix the dates at all, but between the times of the signing of the power of attorney in December, 1907, and to-day, I have heard on several occasions that they were drilling wells and expected oil from them on lands located under the power. Got this information from Searls but cannot say when. It must have been before the surrender of certificate 32, to Searls.

Q. I now invite your attention to a paper, or three sheets of typewritten matter which is headed, "Pacific Oil Lands Company, First Report to Stockholders," and in pencil, in the upper right-hand corner, "Jan. 1914," and in the upper left-hand corner, the initials "H. A." and "F. H."; will you please examine that (showing witness)? A. I have seen a paper similar to that before. Q. Do you remember where you received it from, or when you saw it? A. Why, I know I received it at home. Now, just when that was— Q. Was it before or after you surrendered your certificate No. 32 in the Pacific Oil Lands Company? A. Why, I cannot say that of a surety, but I know I can place it within six years, and that is the nearest I can come to it. Q. With reference to the check for $20, dated January 8, 1914, can you fix any time when you received this report from the Pacific Oil Lands Company? A. As to whether it was before or after? Q. Yes. A. No, I cannot say whether it was before or after, but I imagine it was not very far distant from it. Q.

(Deposition of George W. Berry.)

When you signed the original power of [307—201] attorney in December, 1907, what was your understanding as to the liability, if any, you were incurring by signing that paper? A. How do you mean legal liability? Is that the intention? Q. I mean the liability that you might incur for the development of any oil lands? A. Well, I guess whatever liability would occur in any business proceedings. Q. Was there anything said to you about what your liabilities might be? A. No; but I think from my business experience a man is liable at any time for his acts along those lines in a business way. Q. What representations were made to you, if any, by anyone, as to what liability you might incur by signing that paper? A. I don't think there was any. Q. Was there any suggestion made to you by anyone as to what expenses you might be put to by reason of your signing this paper? A. No.

This question was not mentioned by Searls. McMurtry's liability to me at the time of the execution of this power of attorney in December, 1907, was somewhat around $1500 and $2000.

Q. Had McMurtry satisfied this obligation? A. Yes, sir.

Cross-examination.

In December, 1907, held McMurtry's note for somewhere around $1,500 and $2,000, including interest. Do not remember the date of the note. Had Empire Oil and Development Company stock as security. He paid me the principal and some interest, and the remainder in Columbus stock. The settlement on be-

(Deposition of George W. Berry.)

half of McMurtry was made by Searls in person. The indebtedness was an old one as evidenced by a note which had been renewed from time [308—202] to time prior to December, 1907. Don't think it was renewed after 1907. Had known McMurtry not less than five years when I signed this original power of attorney, and was well acquainted and friendly with Searls, as I am now. At the time of signing this power, believed in the integrity of Searls and had no reason to doubt his honesty and purpose. Searls and I had frequently spoken to McMurtry with regard to his business experience and mining experiences, and they told me that they thought McMurtry knew or could find some unoccupied Government land in California, which would be open to location and which might be valuable for oil, and that McMurtry was going to California to attempt to find such lands. Yes, at the time I expected this power of attorney in 1907, I realized that the Empire Oil and Development Company stock that I held was valueless.

Q. What is the fact as to whether Mr. Searls said to you that Mr. McMurtry was anxious to locate lands, oil lands, in California, for people to whom he was obligated, and for people who had lost money in the Empire Land Company, or the Oil and Land Company, in order that he might repay his obligation, and give them an opportunity to make money? A. What is that question again, please. Q. (Question read.) A. Yes, Mr. Searls made that statement. No, Mr. Searls never asked me to lend him money to assist him or McMurtry to perpetrate

(Deposition of George W. Berry.)

a fraud upon the Government, nor did McMurtry, Searls or any other person could get more mining land than entitled to. No, Mr. Searls did not ask me to give McMurtry this power of attorney nor to lend McMurtry my money so that he could locate land for himself. Yes, I gave that power of attorney to McMurtry in good faith. I remember going to the Waldorf Astoria Hotel in New York and signing that ratification. [309—203] Remember Thorn was there and someone else. Am not certain that it was McMurtry. Yes, knew at the time I signed this ratification that McMurtry had taken action under the power of attorney that I had given him and that he was representing that he had made contracts with Herrin and others of date August 4, 1910, which were contracts of sale concerning the lands located for me and other people. Nobody at that time said anything to me about my being only a nominal holder because the lands belonged to McMurtry or Searls, nor did I ever say any such thing to anybody.

Q. Now, as I have read this thing to you, and drawn the matter to your attention, you did know at least by August 15th that contracts had been made for you on your behalf by your attorney in fact that you were ratifying those contracts, didn't you? A. Yes, sir. Q. Now, does this refresh your memory, that Thorn, or McMurtry or anybody else was present, whoever it might have been, said to you that it was necessary to have these ratifications, because the Attorney of Mr. Herrin, who was acting for the Associated Oil Company, or Mr. Herrin and the

(Deposition of George W. Berry.)

other people, demanded proof that the principals were alive and Mr. McMurtry was authorized to go on and sell these lands, or their rights in these lands; do you remember that? A. Well, of course, there was a conversation at that time in regard to this matter in which I signed it agreeable with that conversation, and that the exact wording, or rather the inference, I don't remember now, but I know it agreed with that which I read over several times before I signed it.

Yes, I know that whatever was said I was told it was necessary that my signature should be attached to that document, and am satisfied that I knew at that time that land had been located in my name, contracts had been made concerning the same [310—204] and that I was interested in the lands. No, I had not myself conveyed any interest in these locations to anybody else. Yes, when Searls gave me this $250 for the check he gave me some reason, but exactly what it was I don't remember. It had something to do with oil lands. Suppose I read the matter appearing above my signature in receipt for this $250. Searls gave me some reason for that writing, but I don't remember now what it was. Yes, remember Searls wrote me something about others trying to enter the property and a necessity for keeping jumpers off, but I didn't exactly know what was meant by the term jumpers.

Q. Now, I refer you to the paper, dated the 12th day of August, 1913 * * *

(Contents of Plaintiff's Exhibit 15 recited.) A.

(Deposition of George W. Berry.)

I must have signed it, but I really do not remember that paper.

This certificate No. 32 for 1000 shares of stock in the Pacific Oil Lands Company, my receipt for which is dated September 18, 1911, was received from Searls in person, to whom the receipt was given.

Q. And Mr. Searls, when he gave you that stock, did he tell you what had become of your interest in the contract which you ratified, or what had become of your interest in the locator's lands for yourself? Didn't he tell you that it had all been put into this corporation so as to handle it better? A. No.

I am sure of that. No, he didn't tell me that each of the thirty-two locators was receiving 1000 shares of stock. He then said the stock was valuable but not how valuable, or how much it is worth per share nor did I ask him. He said it was valuable and that I should take it for granted that it was. No, I don't know how many shares of stock the company has or [311—205] what percentage of the total number of authorized shares of capital stock 1,000 shares is, or was. I probably did question that at, one time, but I don't know what the answer was. Did not ask at that time how many shares of capital stock the company had issued. Don't remember the gist of conversation at that time. I know I never met him but what we didn't have an hour's conversation. In fact, he would go over the affairs of these different companies and I got more or less muddled with him, so many names one was as much like the other as two peas, and of course I didn't understand it in a busi-

(Deposition of George W. Berry.)

ness way. Nothing was said at that time about the fact that the Government had withdrawn the land and that if the Government succeeded in recovering the lands the company would not have anything at all. But I know that I did receive from Searls letters to the effect that there was some trouble with the Government. But whether it was previous to that or not, that I cannot answer. Think I got this Columbus Midway stock after I surrendered the Pacific Oil Lands Company stock to Searls. No, Mr. Searls did not tell me at the time I returned this 1,000 shares of Pacific Oil Lands Company stock brought to me, and received the $9250, that I could take my choice of "either selling this stock for $250, or holding onto it and take a chance on what its value would be; that the Government was trying to recover these lands, trying to recover upon the contracts owned by the Pacific Oil Lands Company, and if the Government won, the stock would not be worth anything at all?" He told me nothing about that. He asked me if I would take $250 for it, and I told him yes. Yes, I read that report of the Pacific Oil Lands Company of January, 1914, but naturally forget what the import of it is.

Q. And you did have some information as to the acreage of [312—206] twenty-eight hundred acres contained in this report? A. Yes, sir. Q. And you did have some information as to what was done with the land in order to work it up, didn't you? A. Yes, sir. Yes, I was advised, whatever there was in the report at the time I read it. Don't know that I

(Deposition of George W. Berry.)

knew that trouble with the Government existed at the time I surrendered this stock to Searls for $250. That was not the reason that I took $250 without debating the matter. I had left everything to Searls and McMurtry. Mr. Searls was my friend, and I considered that he would look after my interests and I considered Mr. McMurtry was a man of honor and I respected him myself. Had no reason for thinking that McMurtry would take the interest which I had in the located oil lands, and I never knowingly gave him permission to do it. At the time Searls offered me $250, for the stock did not advise with him as to whether it would be a good thing to keep it or let them go at that price. Am sure about that. Considered that I had a right to sell it at any price I chose.

Q. Now, didn't you know as a matter of fact, after reading that report, that those 1,000 shares of stock in this company were given to you, and represented your interest in those located lands? A. In the located lands of that Pacific Oil Lands Company? Q. Yes, exactly. A. But, as I understand, there are several locations which I did not seem to know anything about. The other one, of course, when I held those shares, I was holding a certain amount in that particular locality. No, I did not think this 1,000 shares was given to me as part payment of the note or interest on the note that McMurtry owed me. The Columbus Oil Lands Company was.

Q. Is it a fact that when you are reported as saying in reference to the interest on your note, "Mack's

(Deposition of George W. Berry.)

property'' that [313—207] you were referring to the Columbus Midway property and stock, and not to the property or stock of the Pacific Oil Lands Company, referred to in the report from which I have just interrogated you, as a locators' property? A. That may be possible, because there are different names, and there are three different companies there, and all more or less all muddled up to me, and it is possible it may have been mixed a little. Q. You didn't think that the property you located, and those thirty-two other people located, belonged to McMurtry, did you? A. No, I did not. I didn't know the standing, that is, my exact relationship to these Columbus Oil properties. Q. And it was, in fact, the Columbus— A. I don't mean the Columbus. I mean the Pacific Oil Lands Company. Q. You mean at the time you testified? A. Yes, sir, when I made that statement. I am learning more in this matter all along the line. Q. You did not mean to infer then or now, do you, that the properties which you located or any interest therein, belonged to Mr. McMurtry, do you? A. No, no, no. No, I did not mean to infer that the other seven locators with me had located for or on behalf of McMurtry. I understood that he was not in it; that he was in some other property that I didn't know the name of. Am not acquainted with H. M. Walker, H. E. Bashore, W. F. Christman, or Pentz or Mahr. There are three persons in this company, or in this matter that I have had an acquaintance with, and that is Mr. Searls, Mr. McMurtry and

(Deposition of George W. Berry.)

Mr. Thorn. May possibly have met others but these three are the only ones I have personal acquaintance with, and what information I had came from them. I turned the matter over into Mr. McMurtry's hands when I gave him that power of attorney, and I left it to his knowledge to do what he thought was best concerning it. I knew nothing about oil. [314—208]

Q. You mean for you? A. For me.

Certainly I would not have signed that power of attorney of December 1907, if I had known that by executing it, it would become an instrument in the hands of anyone to unlawfully acquire the right of possession to the public domain.

Now, I have my bank-book with me and find that I deposited $1,000 on December 29, 1910, on McMurtry's notes to me. I have here a memorandum, which I think correct, in which I say I received on December 28, 1910, $1,000 on account, and there being still due me $2,340.31. Then on September 18, 1911, I recieved $1,500. That memorandum was made after I sold the Pacific Oil Land stock for $250. I know because there is a memorandum of that transaction. My bank-book shows that I deposited this $1,500 on September 21, 1911.

Mr. ACH.—In response to my question the gentleman produces a certificate of 4,000 shares of the Columbus Midway Oil Company, No. 441, issued to George W. Berry for 4,000 shares, bearing date the 26th day of September, 1911, signed Douglas S. Watson, President, L. H. Jacobs, Secretary; the cer-

(Deposition of George W. Berry.)

tificate announcing that this is a corporation organized under the laws of the State of California, incorporated June 18, 1910, capital stock $1,000,000, one million shares.

Q. Now, that your deposit book is here, which shows that a deposit was made on December 21, 1911, of $1,500, I present you your receipt for the certificate of stock, certificate No. 32, a thousand shares of the Pacific Oil Lands Company, dated December 18, 1911. Do you now remember if you had that Pacific Oil Lands Company stock in your possession at the time you were [315—209] paid the $1,500, or whether you got the $1,500 before you got the stock? A. Before I got the Pacific Oil Lands Company stock? Q. Yes, sir, whether it was before or after, do you remember now? A. You are speaking now of whether I had that fifteen hundred previous? Q. Before or after you signed that receipt for that stock? A. If I remember right, it must have been afterwards the sum of $1,500, as that amount was the last one I received.

Think I received this Columbus Midway stock after I received the last payment on the note. I think it was later because I think from a letter I have here—

Q. Have you a letter here in reference to that? A. Well, it is merely a personal letter from Mr. Searls. I think it speaks of that stock.

Mr. ACH.—The letter reads as follows: It is on the letter-head of William Baumgarten & Company,

(Deposition of George W. Berry.)

323 Fifth Avenue, New York, and dated New York, September 23d, 1911:

"Dear Berry:

"Just a reminder for you, when you get home and think of it, please sent me that old 'Empire' stock so that I can get it out of the way. Mack left Wednesday for home with everything in excellent condition, so now we all look for *results.* A year or two will mean MUCH. Your other stock is ordered and ought to be here in another week or so, when I will see that you get it. Also I will try and see Pratt tomorrow, and see what he has to say"—

The WITNESS.—That is in reference to another matter. Q. (Continuing reading:) "Put that check in in time now, if not already in. Sincerely yours, F. H. Searls."

Yes, this letter refreshes my memory as to the fact that I and Searls had a meeting shortly prior to the date of the letter. This reference to stock must have the Columbus [316—210] Midway stock.

(Witness produces a letter which is marked Joint Exhibit No. 1 which he states he received from L. B. McMurtry, San Francisco, in the course of the mails.)

Mr. ACH.—The letter which you hand me is dated May 15, 1910, after being addressed to you as "My dear Mr. Berry," states as follows:

> "We expect any day now to be able to pay off all of the old accounts, and take up all stock sold, with interest. Secretary Ballanger is making some trouble for us. If it had not been

for him, you would have had your money before this. You were sure of getting it within two or three months."

* * * Is it not a fact that that referred to the Empire stock which you held at that time as security? In other words, isn't it a fact that you did not have any other stock in any other oil company with which Mr. McMurtry was connected on that date? A. Why, it must have been Empire stock, but what that refers to mostly is to the matter of those notes in which I was most interested. Q. * * * That was in response to your demand for the payment of the McMurtry notes? A. That was what it was. Q. Have you any other letters from Mr. Searls? A. (Witness produces letter.) Q. In answer to my question you produce letter dated May 21, 1910, signed Searls. A. Yes. (It is marked Joint Exhibit 2 and reads as follows:)

"Your note received. I have tried to get down to see you, but this is such a slave position and you so far away, I can't make it. I called you on the phone this afternoon, but no answer, closed, I guess. I had a letter from Mack this morning. He says a couple more [317—211] months, maybe sooner, will fix things up with him, and he can clean the slate, and my advice to you is to try to be patient a little longer. I know it is hard, but I am so sure of the outcome that I can't help but advise you to rest on your oars. Things will surely come our way, so sit tight and saw wood."

(Deposition of George W. Berry.)

Q. I see this communication is dated at the top, "323 Fifth Avenue." That is where this gentleman was working at that time? A. Yes, New York City. Q. Then he winds up in this letter, "Regards to Mrs. B. Mack's address is 1325 Green Street, S. F., Calif." A. Yes. Q. Have you any other letters from McMurtry or Searls? A. No, not that I can find.

Redirect Examination.

Q. I invite your attention now to letter marked Joint Exhibit No. 2. How did Mr. Searls come, if you know, to write that letter to you? A. Why, I asked him about the payment of the note, or notes, whichever they were at that time, and that was his answer. I asked him also if I could not write to McMurtry, and that was what he gave me his address for at the bottom of the letter. Q. Did you afterward write to McMurtry for the notes? A. I did. Q. Is the letter which was marked Joint Exhibit No. 1 the answer which you received from McMurtry? A. I believe it was. I had received two letters from McMurtry. That is all I ever received. I do not think, I do not know what is contained in the other one, and whether this is the answer or the other, I do not know. I think this is the first one, though.

Recross-examination.

Q. Well, this is the fact, isn't it, that you received from McMurtry, directly or indirectly, $1,000 in money or check, December 28, 1910, and $1,500 Sep-

(Deposition of George W. Berry.)

tember 18, 1911, and the Columbus Midway stock in payment of that debt against McMurtry? A. Yes. [318—212]

Q. And that afterwards in connection with this transaction you received $250 for the sale of the Pacific Oil Lands Company stock; isn't that correct? A. Yes. [319—213]

**Deposition of Julius W. Pentz, for Plaintiff.**

JULIUS W. PENTZ, called April 20, 1917, on behalf of the plaintiff, testified by deposition as follows:

Am a publisher and reside at Hempstead, Long Island. Resided in New York City in December, 1907, and was a publisher at 299 Broadway. Never lived in California. Was not acquainted with L. B. McMurtry in December, 1907, and don't remember knowing F. H. Searls and J. B. Thickens; knew C. W. Thorn.

Q. The records of Kern County disclose that J. W. Pentz and others appeared on December 18, 1907, before Samuel C. Worthen (substance of Plaintiff's Exhibit 7). Are you the J. W. Pentz who executed that instrument? A. I think I am; yes, sir. I remember that Mr. Thorn came into my office and said that there were a number of other men who were willing to stake out some mining claim or oil land claims, rather, in California, and that by getting my signature the thing might develop into something valuable for me. That is as far as I can remember. Was not then or now familiar

(Deposition of Julius W. Pentz.)

with the mining laws of the United States; probably had a vague idea of what rights a citizen might have under the circumstances. Had the idea that if I and other parties became interested in any oil lands or mining claims of any kind, that the Government would protect our rights against fraud or infringing upon our rights. Had had no business relations with Thorn prior to that time. He was connected with the Empire Oil Company, located on the same floor in the Barclay Building, No. 299 Broadway, and was in our office and had seen him, in our office, perhaps all during that time and we were there about six years in that building. Think I signed the power of attorney in my office at the time he first mentioned it to me. [320—214] Think a Daniel W. Darling, who had a desk in our office, was present and think he was the man who introduced me to Thorn. Don't remember that Darling signed the power of attorney in my presence. Don't remember S. H. Freeman, J. F. Harder, F. H. Searls or Frank D. Taylor. Think I recall seeing Powell afterward with Darling and Thorn. Don't remember the next paper I signed in this connection. Think I signed others, but don't remember the nature of them.

(Plaintiff's Exhibit 17, being a photographic copy of the ratification, shown witness.)

That looks like my writing, it must have been brought into our office by Thorn. Don't remember what he said. Don't remember even the substance of what he said. I must have read it before signing

(Deposition of Julius W. Pentz.)

it. Don't remember that I made any inquiries of Thorn as to why he wanted me to sign it. Did not then know how many locations had been placed upon public lands in California under my name. Made no inquiry as to the number of claims or as to the value of any lands located by the use of my name. Darling died subsequent to May, 1913, cannot say just when. Don't recall when I next heard anything about these oil land transactions, but I know I received some shares of stock from Mr. Thorn.

Q. I invite your attention now, Mr. Pentz, to a check which is, in substance, as follows: Check No. 160. New York, September 11, 1911. Second National Bank of the City of New York. Pay to the order of H. W. Pentz, two hundred and fifty dollars. ($250.00.) (Signed) F. H. Searls. And on the reverse side thereof is the following in typewriting:

> "Received from L. B. McMurtry, $250.00 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern [321—215] County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 18th day of December, 1907."

And right underneath that typewriting which I have read to you is your signature, "J. W. Pentz." And written just below that is the name of C. W. Thorn and F. H. Searls. Is that your signature

(Deposition of Julius W. Pentz.)

to that typewriting, or just underneath that typewriting (showing witness)? A. Yes, sir. Q. On the back of this check? A. Yes, sir. Q. Do you remember when you received that check? A. No, sir. Q. Look at the date of it and see if that refreshes your memory any (showing witness)? A. This may have been given to me at the time Mr. Thorn gave me the shares of stock, but I am not sure about it now. Q. Who gave you this check? A. Mr. Thorn, I think. Q. What did you do with the check after you had endorsed your name, J. W. Pentz, on the back of it? A. Mr. Thorn took it, and I think he gave me some stock for it, or did something with it.

Received no cash by reason or endorsing that check. The stock certificate that I received was one for 1,000 shares in the Pacific Oil Lands Company, and the other one was for 750 shares, I think, in the Columbus Midway, or some such name as that. I had a sort of mixed up idea of the whole affair—I don't know how to express it—but it seemed to me that the shares were given to me because I had, through Mr. McMurtry, staked out some oil lands in certain places along there, and it seemed to give them, it seemed to help them to stake out more oil lands, or continue with the business, or something of the kind. Certificate No. 21 of the Pacific Oil Lands Company looks like the one that Thorn gave me at that time. The receipt attached thereto, dated September 16, 1911, bears my signature. [322—216] Don't remember signing it. It was probably

(Deposition of Julius W. Pentz.)

presented at the time the certificate was given to me. The next I recall in this matter was two Secret Service men came into my office in the Woolworth Building. It may have been in October, 1913. I heard their names but don't remember them. They showed me their badges. The next I recall in this oil land transaction Mr. Thorn came in, but how soon after, I don't remember, and he said to me, "Do you remember the time when I gave you two certificates of stock?" And I said, "Yes," and he said, "Well," he said to me, "at the time when you received those you promised to sell those back to us for $500," and as he said so, he pulled out five one-hundred dollars bills and as he did so he said, "Here is your money. Would you mind getting your stock?" And I said, "Must I do it now? I am too busy to bother now, but rather than to get into a fight about it, I will get you the certificate of stock," and I secured the certificates from the deposit box and handed him the stock and he gave me the money."

Q. Do you remember on the other visit that you promised to surrender it for $500 to Mr. Thorn? A. Absolutely not.

(Witness identifies signature on Plaintiff's Exhibit 18.)

That must have been presented to me by Thorn. Don't remember the conversation at the time. I signed it for the same reason I signed the other papers. The oil lands had been staked out and also I had my doubts about it and being somewhat of a

(Deposition of Julius W. Pentz.)

gambler, I thought the thing might turn out all right after a while.

(Identifies signature on Government's Exhibit 19.)

(Plaintiff's Exhibit 17 read in evidence with the deposition and is as follows:) [323—217]

(This is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman and purports to have been executed by J. W. Pentz, August 16, 1910.) [324—218]

(Plaintiff's Exhibit 18 with this deposition is a proxy similar in form to Plaintiff's Exhibit 5 with the deposition of Frank B. Chapman, and purports to have been executed by J. W. Pentz, August 12, 1913.) [325—219]

(Plaintiff's Exhibit 19 with this deposition is a consent to dividends similar in form to Plaintiff's Exhibit 6 with the deposition of Frank B. Chapman, and purports to have been signed by J. W. Pentz, December 9, 1913.) [326—220]

Q. I now invite your attention to a check, in substance as follows:

> "San Francisco, 1/8/1914. No. 1187. The Bank of California National Association, San Francisco. Pay to the order of J. W. Pentz, $20.00."

That check is signed, "Pacific Oil Lands Co., by F. E. Harrison, Secretary and Treasurer."

It is also signed, "L. B. McMurtry, Vice-President." Endorsed on the back thereof in a rubber stamp is the following:

(Deposition of Julius W. Pentz.)

"Pay to the order of The National Nassau Bank of New York." And right underneath that rubber stamp is the name, "J. W. Pentz."

That is my signature on the back of that check. Received it from California by mail and deposited it in my bank to my own credit. After surrendering this certificate No. 21 to Thorn and receiving $500, received no other money, on account of the fact that I held said certificate No. 21 on account of any of these oil transactions. When I surrendered this certificate I did not know nor had I been informed how many times my name had been placed on oil land locations in California, or what rights in oil lands had been located in that State by McMurtry acting under the power of attorney which I signed in December, 1907, nor had I any knowledge whatever of the assets or resources of the Pacific Oil Lands Company, nor did I have any knowledge with respect to the transactions concerning these oil land matters that had been carried on by Mr. McMurtry acting under this power of attorney. As far as I can remember. Well, I tell you at the time this was surrendered, I was very much engrossed in my own business and looked upon this as a sort of a side issue, and I paid very little attention to what transpired in this transaction. No, since the surrendering [327—221] of that certificate I have not claimed any interest in the lands that were located under this power of attorney.

Q. Do you claim any interest in any such lands? A. Why, I suppose I have a right to. Think this

(Deposition of Julius W. Pentz.)

certificate showed the capital stock of the company. I don't remember the exact amount. Do not know who the other stockholders were when I surrendered the certificate. Never made any inquiry to ascertain the number of locations on which my name appeared or the value or extent of any oil lands in California upon which my name appeared as a locator that I remember. Never was called upon for money in the development of these oil lands, nor did I know at the time I surrendered this certificate the state of the development of the lands. Did not remember whether any representations were made at the time I signed the power of attorney as to what expenses I would be compelled to bear, if any, in the development of any oil land that might be located. Never knew McMurtry personally.

Q. I now invite your attention to a paper, or three sheets of typewritten matter, which are headed, "Pacific Oil Lands Company. First Report to Stockholders." In the upper right-hand corner, in pencil, is "Jan. 1914," and in the upper left-hand corner the initials, "H. A." and "F. H." Please examine that. A. I do not remember ever having seen this. Q. Have you ever been interviewed by any special agents of the Government in this matter? A. Yes, I reported this, that two men came into my office in the Woolworth Building. Q. Have you ever had any conferences, recently, with Mr. C. W. Thorn in regard to these matters? A. No, sir—yes, Mr. Thorn was in my office with Mr. Brann,—

(Deposition of Julius W. Pentz.)

They were in my office on Saturday morning. [328—222]

Q. I mean during the year 1916, did you have any conferences with Mr. Thorn? A. I think Mr. Thorn was in my office last—it may have been the middle of the year in 1916; suggesting that,— Q. Did he say anything to you at that time about these oil matters, these oil lands? A. He asked me if I could not spare the time to go down there and live on those lands.

Mr. ACH.—Live on them?

The WITNESS.—He said live on them, whatever it was—I don't remember now.

Q. To what lands do you refer? A. These oil lands.

Cross-examination.

Have been in the publishing business about 14 years. Now publish the "Hardware Review." It is a corporation. I have the controlling interests. In December, 1907, I was on the thirteenth floor of the Barclay Building, 299 Broadway. The Empire Oil Company office, if I remember rightly, was on the same floor. Don't remember ever knowing F. H. Harder, S. H. Freeman or F. H. Searls. In 1907, my salary was seventy-five dollars a week. Think it was the same in September, 1911. In September, 1914, it was one hundred dollars a week. Before becoming interested in the publishing business was a stenographer and clerk, law and commercial. Was in a law office about two years, in which time I prepared papers. I knew the purpose and

(Deposition of Julius W. Pentz.)

effect of an acknowledgment before a notary public. Yes, my experience was such that I always read over a paper before I signed it. The money I invested in the publishing business was money I had saved from my earnings. Did not always rely entirely upon my own judgment in signing papers. In this transaction I relied on what Mr. Thorn told us about this matter. Had confidence in him, in a way I did. [329—223] Had no business transaction with him before signing this power of attorney. Mr. Darling had a desk in our office. He and Mr. Elliott were very friendly with him and once in awhile Thorn would come in and talk with Darling and Elliott, and when this first power of attorney was presented, and the other fellows thinking it was all right, why I merely read the thing over and signed it. Oh, yes, I knew it was the power of attorney. Talked it over casually with Darling and Elliott, but don't suppose I made any special effort. They thought it might be a good thing to own some oil land and this was done for that purpose. To tell you the truth, my feelings were rather mixed in the matter. I had my doubts because of the Empire Oil Company going out of business, and this company being organized to stake out more lands, and I had my doubts whether the thing might prove profitable. Nevertheless, I signed it, being a gambler, somewhat. Yes, it was my intention in signing the power of attorney, to acquire and own some of those oil lands, but I still had doubts in my mind. Never talked with Mr. McMurtry about the matter at all.

(Deposition of Julius W. Pentz.)

The only persons that I talked with were Darling, Elliott, and Thorn. Darling was acquainted with McMurtry, he said, before signing the power of attorney. Don't remember what he said concerning Mr. McMurtry. Yes, he said that he had been advised that Mr. McMurtry was going out to California to try and find some Government land that could be located for oil. Don't remember that he said he got this information from Thorn or McMurtry. No one ever asked me to sign any agreement to the effect that whatever lands were located in my name in California would belong to anybody else. Don't remember that Darling said that he had agreed that any lands located in his name would be given in whole or in part [330—224] to anyone else. Yes, I knew at the time of signing this power of attorney that a citizen of the United States, under the laws, had a right to locate mining lands that belonged to the Government. Was not advised before signing this power of attorney that McMurtry had a large experience in the oil business and was acquainted with Government lands in California. Don't remember that anyone ever said that his name was put in because he was supposed to go out to California, and stake out the lands, that he had some knowledge of the oil business and the prospects out there was implied. At the time I signed the power of attorney no one promised to pay me any money for it, or give me anything for my signature to the power of attorney. The only promise

(Deposition of Julius W. Pentz.)

was made by Mr. Thorn that the thing might turn out to be valuable.

The letter which came with the check for $20.00 is the only other letter I recall receiving from the Pacific Oil Lands Company. After signing this power of attorney at the request of Thorn he gave me another paper to sign. Don't know whether it was a power of attorney or not. Never communicated with McMurtry or wrote any letters to Thorn. I understand the language of the power of attorney as read and I read it at the time I signed it. Yes, understood that it gave McMurtry right not only to locate mining claims and improve the same, but also to sell or mortgage all the same or part thereof, and that this specifically applied to oil lands in California. Don't remember ever signing any paper modifying or repudiating the power of attorney. If I could see any document to that effect, I might refresh my memory, but offhand, I don't know. There may have been one. The special agent of the land office interviewed me, it may have been about 1913 or 1914. [331—225] Don't remember how long before that it was that I had seen Thorn. Had not had any reports from the Pacific Oil Lands Company, Thorn, Darling or Elliott, of and concerning what McMurtry had done in California under the power or attorney. Don't recall having had any report at all of the transaction. Don't remember that Thorn had told me that McMurtry had acted in the matter prior to the visit of the special agents. The only thing I recall having received be-

(Deposition of Julius W. Pentz.)

fore that was the $20.00 dividend check. Yes, I held the stock then and knew it came to me as the result of my connection with McMurtry, but no one had told me that McMurtry had located lands and caused them to be transferred to the Pacific Oil Lands Company. No one had told me that. Thorn gave me the stock. Don't remember just what he said. I certainly was acting in good faith without intent to injure anybody when I received that check and receipted for the stock. Was acting in good faith when I signed the ratification (Government's Exhibit 17). I read that at the time I signed it and understood it before acknowledging.

Q. This ratification also contains this statement by you: "Signed, sealed and acknowledged"—after you read it and understood it—"I do hereby ratify, approve and confirm those certain contracts of sale made for me and in my name with L. B. McMurtry, as my said attorney in fact."

Now, Mr. Pentz, you knew at that time that it was represented to you that some way or some how, by somebody, and by this instrument that you were asked to sign, that McMurtry had acted upon the powers of attorney, and had recorded them, and for you, and in your name, and as your attorney in fact, made contracts of sale, and that you were ratifying and approving those contracts by putting your name there, didn't you? [332—226] A. Well, Mr. Thorn, he evidently must have presented this thing to me for signature, and he might have told me at the time what thing was for. Of course, I was en-

(Deposition of Julius W. Pentz.)

grossed in my own business, and I don't suppose I paid very much attention to that, feeling that this instrument was a part of what had already been done, and simply a sort of a link in the chain of acquiring the oil lands, or whatever they were after.

Mr. ACH.—I move to strike the answer out as not responsive to the question. Please read the question to the witness again, and I will ask the witness to please give me a direct answer.

(Question read to the witness.)

A. Well, I don't know how to answer that, for the reason that I may have been, I was, then, very much engrossed in my own business, and this may have been presented by Mr. Thorn, and I signed it, and he may have made some explanation as to the reason why it should be signed, and so forth. Q. But you saw, Mr. Pentz, as a man of affairs, with the experience you have had, that you were ratifying, by your signature, mining contracts made in your behalf by your attorney in fact, Mr. McMurtry, for the sale of something? A. Yes, I don't deny that. Q. You would not have done that unless you had some information on it, would you? A. I don't know how to answer the question for the reason that this paper may have been presented by Mr. Thorn, as the others were, and believing that they were engaged in staking out oil lands, I presume I signed it, and paid no further attention to it. Q. You believed at that time that Mr. McMurtry and Mr. Thorn were taking care of your interests in the matter, and you were ratifying the acts that they

(Deposition of Julius W. Pentz.)

were doing on your behalf. A. Yes. Yes, in signing the ratification I must have known that these people were asking me to ratify something that McMurtry [333—227] had done in California. I don't remember what passed between the special agent and myself or whether McMurtry's name was mentioned. Recall only four interviews with Thorn in this matter. The first time when I signed the power of attorney, the second time a year or two later, I think when he asked me to sign this ratification, or whatever you call it. I saw Thorn occasionally on the floor there in the meantime, but nothing was said about this matter that I recall. While I was in possession of the Pacific Oil Land Company stock I remember reading something about the Southern Pacific being in trouble about having some trouble about having some of these lands, and the Government trying to reclaim or get them away from them—something to that effect. I don't know whether it was on mine or not.

Q. But, as to this land, didn't Mr. Thorn say to you at any time, in your talks with him on the subject, that the Government had withdrawn these lands, and was about to commence suit to recover these lands? A. He was in my office at the Woolworth Building, at one time, and he asked me, if I remember rightly, whether I would be willing to live on these lands in order to verify the claims, but when that was, I don't remember, though.

He simply said would I be willing to go out there and live on the land, that he expected to get some

(Deposition of Julius W. Pentz.)

others to go, and would like to have me join the crowd, and live on the land. Don't remember exactly when this was. I suppose the lands he referred to were oil lands, though he did not say anything about that or how far they were from San Francisco. He said they were in Kern County, that is all we knew. I did not accept the proposition and he did not go into details. Don't remember the circumstances under which I received the stock in the Columbus Midway Oil Company. It was one certificate for 750 shares, I think. [334—228] Gave it back to Thorn from whom I received it as well as the certificate of stock in the Pacific Oil Lands Company. Thorn never gave me any money nor promised me any while he said this thing might turn out to be very valuable referring to the stock. Yes, when he gave me the stock he said something about it representing my interest in the lands located and in the contracts that I had ratified, and that he thought it might turn out to be very valuable.

Q. Now, you seem to have forgotten, notwithstanding the fact that you were interrogated about it by my friend Mr. Hall, that on or about September 11, 1911, you endorsed this check for $250, payable to your order, and signed by F. H. Searls. If you will kindly turn it over, the endorsement is upon the back. Now, isn't it true that at the time you got this certificate of stock of the Pacific Oil Lands Company, that Mr. Thorn also gave you or presented to you that check of $250, and told you that

(Deposition of Julius W. Pentz.)

that was a part of the money which the locators and each and all of them were receiving, realized out of those contracts, and that he had some Columbus Midway stock, and that he could give you 750 shares of that stock for $250, and advised you to buy it, and he said he thought you would make a sum of money out of it,—isn't that true? A. That may have been the way in which I secured the Columbus Midway stock. Q. Isn't that true? A. It may have been. Q. Don't you kind of remember it that way, now that I put it to you? A. Yes. Q. Now, is it not true also that at that time he told you that in addition to the $250, that all these lands and contracts, or something like that, had been put into a corporation by Mr. McMurtry, as your agent, in order to better handle the matter and that therefore they desired that you should sign that transfer over to McMurtry, who had already [335—229] formed this thing into the Pacific Oil Lands Company, as your agent, and taken the stock, isn't that true? A. It may have been true. Q. Don't you remember it now, or something to that effect? A. Well, that probably was the method of procedure, but I can't now swear it was. Q. I am not asking you to swear to it as the method of procedure. I am asking you now whether there is not an impression come into your mind that that, or something to that effect, was said by Mr. Thorn to you at that time? A. I suppose there was. Q. Does not the mere asking of the question suggest to your mind that there was something of that kind said to you by Mr.

(Deposition of Julius W. Pentz.)

Thorn at that time? A. Yes. * * * Q. You heard Mr. Hall state that it was in August, 1913, that this interview is said to have occurred, and you just said that it may have been as long as two years after you moved into the Woolworth Building. You are not very good in your memory as to happenings and facts, are you, Mr. Pentz? A. No, sir, not in this business. Q. What? A. Not in this affair. Q. Now, the next question will be: Can you remember what took Mr. Thorn into your office,—I mean, of course, what business took him in your new offices in the Woolworth Building. Do you understand the question? A. Yes, I understand the question. I think it was about these oil lands, about proving my claim, and about living out there, as I said before. That may have been it, but I do not recollect now. Q. The fact of the matter is that he talked so much about oil lands, and different things in connection with these oil lands, at the various times that he came to see you, that you as a matter of fact did not pay much attention to what he told you? A. No, sir, I was engrossed with my own business. Q. That is true, that you did not pay much attention to what he told you about it? A. Yes. Q. Just a little [336—230] impression that you got now and then? A. Yes. Q. Well, you took the results, whatever they might be, such things that were coming to you by reason of the location of these oil lands, or whatever was located, by Mr. McMurtry? A. Yes. Q. And you did not think that Mr. McMurtry or Mr. Thorn or anyone connected

(Deposition of Julius W. Pentz.)

with the location of these lands, had deprived you of a single thing that was coming to you by reason of your having located these lands through Mr. McMurtry? A. No, sir. Yes, I read Plaintiff's Exhibit 18 before signing and knew what it was. Thorn asked me to sign that. He didn't say much of anything except that he asked for my signature to appoint Mr. McMurtry my proxy. He did not explain, to the best of my recollection. Yes, I received Government's Exhibit 19 through the mail from San Francisco, with request that I sign it, and that there would be a dividend coming to me as a stockholder in the Pacific Oil Lands Company. Yes, this check No. 1187, dated January 8, 1914, for $20.00 bears my endorsement.

Q. Now, I show you a letter marked Defendant's Exhibit "D," being a letter written on the letterhead of the Pacific Oil Lands Company, dated January 8th, 1914, reading as follows:

"Dear Sir:

Enclosed you will please find dividend check for $20.00, same representing your *pro rata* of the first distribution to the stockholders of the company of cash assets amounting to $20,000, and to which distribution we hold your written consent.

Accompanying this letter you will also find a statement covering the affairs of the company. This also, we feel sure, will prove of great interest to every stockholder.

(Deposition of Julius W. Pentz.)

Wishing you a very happy and prosperous 1914, [337—231] we beg to remain,

Very truly yours,
PACIFIC OIL LANDS COMPANY,
By F. E. HARRISON,
Secretary."

Didn't you receive a letter identical with that, with your $20.00 check? A. I think I did. Q. And is it not equally true that enclosed in that letter with that check, there was a copy of the statement marked with the initials H. A., and the initials F. H., dated January 1914, Pacific Oil Lands Company, First Report to Stockholders. Isn't it true that that statement was included in that envelope and that you received it? A. I remember a statement was inclosed, but whether this was the one, I don't remember.

Yes, I read the statement. Presume I destroyed all the letters, reports, etc., in writing, which I received in this matter, as I have looked and been unable to find any. After I sold my stock I paid no attention to what had preceded that. When I sold this stock to Thorn he said to me, "You remember that when I gave you this stock, that you promised you would let me have it back for $500. Here is your money." That was in 1914. That is all I can remember, that he said,—he tried to recall to my mind the giving of the stock to me, the 1000 shares of the Midway Oil Company stock, and the other, and he said, "You remember promising me that if I wanted to buy this back, you would let me have it

(Deposition of Julius W. Pentz.)

for $500," or something to that effect.

Q. Wasn't that the Columbus Midway Oil Company stock that you bought for $250, and he told you at the time that he sold it to you for $250, and when he gave you that check, that if at any time you wanted to sell it back, and that if he wanted to take it back for $500, you would sell him that 750 shares of Columbus [338—232] Midway Company stock—isn't that true? A. No, sir, he took back both certificates. Q. No matter what he took, isn't what I told you true? A. I don't remember. Q. You will not dispute it, will you? A. I can't tell, because my memory fails me. Q. Did you advise with anybody else before concluding to take this $500 and giving him this stock? A. No, sir. Q. As you now remember, you mean that you never did make the promise to Mr. Thorn that you would ever sell the stock to him for $500. A. Absolutely not. Q. He did not deliver this stock in the Pacific Oil Lands Company, to you, the 1000 shares, upon the condition that you would sell it to him for $500 at any time, did he? A. No, sir. I gave him the stock and received $500 in cash in my office all at one interview; there had been no previous talk about it. I then had the stock in my office where I have kept it since having been interviewed by the Secret Service men. Did not mention to Thorn this interview by the Secret Service men. Thorn did not tell me what he was going to do with the stock or for whom he was buying it. I did not ask him. Did not ask him what had become of the contracts which had

(Deposition of Samuel R. Banks.)

been ratified in 1910, or what had become of the locations which had been made in my name nor did he tell me. [339—233]

**Deposition of Samuel R. Banks, for Plaintiff.**

SAMUEL R. BANKS, called on behalf of the plaintiff, February 20, 1919, testified by deposition as follows:

Reside at 531 West 159th Street, New York City. Am thirty years of age. At the present time I have concessions at the "Billy" Sunday Tabernacle. I have been a clerk in the office of Myers & Clark, an employee of the United States, and of the city of New York as a standardization salary expert. Resided at the same place in December, 1907. Think I was a salesman with the Pittsburg Reduction Company, at 99 John Street. Have known Frank R. Searls socially for about eleven years.

I am the Samuel R. Banks whose name appears as having signed that power of attorney (Plaintiff's Exhibit 5).

C. W. Thorn, whom I had known three or four years, talked about some act of the Government about these lands out there in California, and said something about it was in my jurisdiction, being of age, that I had the privilege of locating some of this land. I brought up the question as to whether I had to be a resident in California, or whether I had to know anything about the land in particular to make a location, to become a locator, and he said no. Yes, I knew L. B. McMurtry. Had met him

(Deposition of Samuel R. Banks.)

about a year before. Had had no business dealings with him or with any of the oil companies in which he was interested. Thorn advised me of my rights. (Other names on the power read.) Did not know any of those persons. Quite a while [340—234] later Thorn told me that they had started to sink a shaft, or well.

Q. Did you ever sign any papers after you signed this first paper we have been talking about? A. Yes. Q. When was that that you signed the next paper? A. When I gave the power of attorney to Mr. McMurtry. Q. I now invite your attention to a paper marked Government's Exhibit No. 21, purporting to have been signed on the 15th day of August, 1910, by Samuel R. Banks. This, I will explain to you, is merel ya photographic copy of the original paper. Do you recognize that as a photograph of your signature to the paper which you signed? A. I signed the paper.

I was called down town,—no, I received a letter, I think it was,—I am not positive about it,—and I am also not positive of whether Mr. Thorn or Mr. McMurtry was present at the time. I do know one of the two was. To the best of my recollection, I think it was at one of the hotels herein this city, that it was signed. I was asked, if I was willing to sign to Mr. McMurtry the power of attorney, that is the power of attorney to him, to put in force, or to enforce the location of lands out there,—something to that effect. I don't recollect just the conversation, but otherwise that if I would give my

(Deposition of Samuel R. Banks.)

power of attorney to him, he would do the work for me. Believe I read the paper at that time.

Q. You will observe that this paper reads as follows: "I do hereby ratify, approve and confirm those certain contracts of sale made for me in my name by L. B. McMurtry, as my said attorney in fact, with W. F. Herrin, et al., of date the 4th day of August, 1910. A. Yes. Q. Did you at that time learn anything about this contract dated August 4, 1910? A. Regarding [341—235] the land out there, you mean? Q. Yes, or no, I don't mean regarding the land, I mean regarding the contents of this contract dated August 4, 1910. A. I have a kind of hazy recollection that something was said about it. Q. Please tell me what was said? A. I don't know what particularly was said about it, but I do know there was something said regarding the properties or the lands.

(Plaintiff's Exhibit 21 with this deposition is a ratification similar in form to Plaintiff's Exhibit 1 with the deposition of Frank B. Chapman, and purports to have been executed by Samuel R. Banks, August 16th, 1910.) [342—236]